

**2014**  
**CUMULATIVE**  
**POCKET SUPPLEMENT**  
  
**IDAHO CODE**

Compiled Under the Supervision of the  
Idaho Code Commission

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COMMISSIONERS

TITLES 35-37

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## PUBLISHER'S NOTE

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Amendments to laws and new laws enacted since the publication of the bound volume down to and including the 2014 regular session are compiled in this supplement and will be found under their appropriate section numbers.

This publication contains annotations taken from decisions of the Idaho Supreme Court and the Court of Appeals and the appropriate federal courts. These cases will be printed in the following reports:

Idaho Reports  
Pacific Reporter, 3rd Series  
Federal Supplement, 2nd Series  
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Title and chapter analyses, in these supplements, carry only laws that have been amended or new laws. Old sections that have nothing but annotations are not included in the analyses.

Following is an explanation of the abbreviations of the Court Rules used throughout the Idaho Code.

Idaho R. Civ. P.	Idaho Rules of Civil Procedure
Idaho Evidence Rule	Idaho Rules of Evidence
Idaho R. Crim. P.	Idaho Criminal Rules
Idaho Misdemeanor Crim. Rule	Misdemeanor Criminal Rules
I.I.R.	Idaho Infraction Rules
I.J.R.	Idaho Juvenile Rules
I.C.A.R.	Idaho Court Administrative Rules
Idaho App. R.	Idaho Appellate Rules

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## **USER'S GUIDE**

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To assist the legal profession and the layperson in obtaining the maximum benefit from the Idaho Code, a User's Guide has been included in the first, bound volume of this set.



**ADJOURNMENT DATES OF SESSIONS OF  
LEGISLATURE**

Year	Adjournment Date
2012 .....	March 29, 2012
2013 .....	April 4, 2013
2014 .....	March 20, 2014

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# TITLE 35

## FENCES

### CHAPTER.

#### 1. FENCES IN GENERAL, § 35-106.

## CHAPTER 1

### FENCES IN GENERAL

#### SECTION.

##### 35-106. Disagreement between owners — Viewers.

**35-106. Disagreement between owners — Viewers.** — If adjoining proprietors cannot agree as to the proportion or the particular part of a division fence to be made, maintained or kept in repair by each respectively, either party may apply, on five (5) days' notice, to a magistrate judge, for the appointment of three (3) viewers, who may examine witnesses on oath, and view the premises and must determine:

1. If the fence is owned by one (1) proprietor, how much the other must pay as his proportion of the value.

2. If the fence or the whole thereof is not built, which part thereof must afterward be built and kept in repair by each.

The determination of the viewers must be reduced to writing and signed by them, and filed in the office of the county recorder, and such determination is conclusive upon the parties. If any part of such determination consists in fixing the value of a fence for which one (1) party is to pay the other a proportion also fixed, such proportion must be paid within thirty (30) days after notice of such determination, and if not so paid, may be recovered by action in any court of competent jurisdiction. The viewers are entitled to a fee of three dollars (\$3.00) each, one-half (1/2) to be paid by each proprietor.

#### History.

1884, p. 118, § 1; R.S., § 1305; reen. R.C. &

C.L., § 1269; C.S., § 1961; I.C.A., § 34-106; am. 2012, ch. 20, § 18, p. 66.

### STATUTORY NOTES

#### Amendments.

The 2012 amendment, by ch. 20, substituted "magistrate judge" for "justice of the

peace of the township, if there be one, if not, to the probate judge" near the middle of the introductory paragraph.



# TITLE 36

## FISH AND GAME

### CHAPTER.

1. FISH AND GAME COMMISSION, §§ 36-104, 36-106, 36-107, 36-111, 36-125.
4. LICENSES TO HUNT, FISH AND TRAP, §§ 36-404 — 36-409, 36-415, 36-416.
6. COMMERCIAL TRAFFIC IN SKINS, HIDES, AND PELTS OF WILDLIFE, § 36-606.

### CHAPTER.

14. GENERAL PENAL PROVISIONS, § 36-1401.
15. PUBLIC SAFETY, § 36-1508.
16. RECREATIONAL TRESPASS — LANDHOLDER LIABILITY LIMITED, § 36-1603.
21. OUTFITTERS AND GUIDES, §§ 36-2101 — 36-2103.

## CHAPTER 1

### FISH AND GAME COMMISSION

### SECTION.

- 36-104. General powers and duties of commission.
- 36-106. Director of department of fish and game.

### SECTION.

- 36-107. Fish and game account.
- 36-111. Fish and game set-aside account.
- 36-125. Fixing assessment and fees for wildlife — Wolf control fund.

**36-104. General powers and duties of commission.** — (a) Organization — Meetings. The members of the commission shall annually meet at their offices and organize by electing from their membership a chairman, who shall hold office for a period of one (1) year, or until his successor has been duly elected. In addition to the regular annual meeting, to be held in January, said commission shall hold other regular quarterly meetings each year at such places within the state as the commission shall select for the transaction of business. Special meetings may be called at any time and place by the chairman or a majority of the members of the commission. Notice of the time, place and purpose of any and all special meetings shall be given by the secretary to each member of the commission prior to said meeting.

(b) Authorization for Commission Powers and Duties. For the purpose of administering the policy as declared in section 36-103, Idaho Code, the commission is hereby authorized and empowered to:

1. Investigate and find facts regarding the status of the state's wildlife populations in order to give effect to the policy of the state hereinbefore announced.
2. Hold hearings for the purpose of hearing testimony, considering evidence and determining the facts as to when the supply of any of the wildlife in this state will be injuriously affected by the taking thereof, or for the purpose of determining when an open season may be declared for the taking of wildlife. Whenever said commission determines that the supply of any particular species of wildlife is being, or will be, during any particular period of time, injuriously affected by depletion by permitting the same to be taken, or if it should find a longer or different season, or different bag limit should be adopted for the better protection thereof, or if it finds that an open season may be declared without endangering the



supply thereof, then it shall make a rule or proclamation embodying its findings in respect to when, under what circumstances, in which localities, by what means, what sex, and in what amounts and numbers the wildlife of this state may be taken.

3. Whenever it finds it necessary for the preservation, protection, or management of any wildlife of this state, by reason of any act of God or any other sudden or unexpected emergency, declare by temporary rule or proclamation the existence of such necessity, and the cause thereof, and prescribe and designate all affected areas or streams, and close the same to hunting, angling or trapping, or impose such restrictions and conditions upon hunting, angling or trapping as said commission shall find to be necessary. Every such temporary rule shall be made in accordance with the provisions of chapter 52, title 67, Idaho Code.

4. At any time it shall deem necessary for the proper management of wildlife on any game preserve in the state of Idaho, declare an open season in any game preserve as it deems appropriate.

5.(A) Upon notice to the public, hold a public drawing giving to license holders, under the wildlife laws of this state, the privilege of drawing by lot for a controlled hunt permit authorizing the person to whom issued to hunt, kill, or attempt to kill any species of wild animals or birds designated by the commission under such rules as it shall prescribe.

(B) The commission may, under rules or proclamations as it may prescribe, authorize the director to issue additional controlled hunt permits and collect fees therefor authorizing landowners of property valuable for habitat or propagation purposes of deer, elk, antelope, bear or turkey, or the landowner's designated agent(s) to hunt deer, elk, antelope, bear or turkey in controlled hunts containing the eligible property owned by those landowners in units where any permits for deer, elk, antelope, bear or turkey are limited.

(C) A nonrefundable fee as specified in section 36-416, Idaho Code, shall be charged each applicant for a controlled hunt permit. Successful applicants for controlled hunt permits shall be charged the fee as specified in section 36-416, Idaho Code. Additionally, a fee may be charged for telephone and credit card orders in accordance with subsection (e)11. of section 36-106, Idaho Code. The department shall include a checkoff form to allow applicants to designate one dollar (\$1.00) of such nonrefundable application fee for transmittal to the reward fund of citizens against poaching, inc., an Idaho nonprofit corporation. The net proceeds from the nonrefundable fee shall be deposited in the fish and game account and none of the net proceeds shall be used to purchase lands.

(D) The commission may by rule establish procedures relating to the application for the purchase of controlled hunt bonus or preference points by sportsmen and the fee for such application shall be as specified in section 36-416, Idaho Code.

6. Adopt rules pertaining to the importation, exportation, release, sale, possession or transportation into, within or from the state of Idaho of any species of live, native or exotic wildlife or any eggs thereof.

7. Acquire for and on behalf of the state of Idaho, by purchase, condemnation, lease, agreement, gift, or other device, lands or waters suitable for the purposes hereinafter enumerated in this paragraph. Whenever the commission proposes to purchase a tract of land in excess of fifteen (15) acres, the commission shall notify the board of county commissioners of the county where this land is located of the intended action. The board of county commissioners shall have ten (10) days after official notification to notify the commission whether or not they desire the commission to hold a public hearing on the intended purchase in the county. The commission shall give serious consideration to all public input received at the public hearing before making a final decision on the proposed acquisition. Following any land purchase, the fish and game commission shall provide, upon request by the board of county commissioners, within one hundred twenty (120) days, a management plan for the area purchased that would address noxious weed control, fencing, water management and other important issues raised during the public hearing. When considering purchasing lands pursuant to this paragraph, the commission shall first make a good faith attempt to obtain a conservation easement, as provided in chapter 21, title 55, Idaho Code, before it may begin proceedings to purchase, condemn or otherwise acquire such lands. If the attempt to acquire a conservation easement is unsuccessful and the commission then purchases, condemns or otherwise acquires the lands, the commission shall record in writing the reasons why the attempt at acquiring the conservation easement was unsuccessful and then file the same in its records and in a report to the joint finance-appropriations committee. The commission shall develop, operate, and maintain the lands, waters or conservation easements for said purposes, which are hereby declared a public use:

- (A) For fish hatcheries, nursery ponds, or game animal or game bird farms;
  - (B) For game, bird, fish or fur-bearing animal restoration, propagation or protection;
  - (C) For public hunting, fishing or trapping areas to provide places where the public may fish, hunt, or trap in accordance with the provisions of law, or the regulation of the commission;
  - (D) To extend and consolidate by exchange, lands or waters suitable for the above purposes.
8. Enter into cooperative agreements with educational institutions, and state, federal, or other agencies to promote wildlife research and to train students for wildlife management.
9. Enter into cooperative agreements with state and federal agencies, municipalities, corporations, organized groups of landowners, associations, and individuals for the development of wildlife rearing, propagating, management, protection and demonstration projects.
10. In the event owners or lawful possessors of land have restricted the operation of motor-propelled vehicles upon their land, the commission, upon consultation with all other potentially affected landowners, and having held a public hearing, if requested by not less than ten (10)



residents of any county in which the land is located, may enter into cooperative agreements with those owners or possessors to enforce those restrictions when the restrictions protect wildlife or wildlife habitat. Provided, however, the commission shall not enter into such agreements for lands which either lie outside or are not adjacent to any adjoining the proclaimed boundaries of the national forests in Idaho.

(A) The landowners, with the assistance of the department, shall cause notice of the restrictions, including the effective date thereof, to be posted on the main traveled roads entering the areas to which the restrictions apply. Provided, however, that nothing in this subsection shall allow the unlawful posting of signs or other information on or adjacent to public highways as defined in subsection (5) of section 40-109, Idaho Code.

(B) Nothing in this section authorizes the establishment of any restrictions that impede normal forest or range management operations.

(C) No person shall violate such restrictions on the use of motor-propelled vehicles or tear down or lay down any fencing or gates enclosing such a restricted area or remove, mutilate, damage or destroy any notices, signs or markers giving notice of such restrictions. The commission may promulgate rules to administer the restrictions and cooperative agreements addressed in this subsection.

11. Capture, propagate, transport, buy, sell or exchange any species of wildlife needed for propagation or stocking purposes, or to exercise control of undesirable species.

12. Adopt rules pertaining to the application for, issuance of and administration of a lifetime license certificate system.

13. Adopt rules governing the application and issuance of permits for and administration of fishing contests on waters under the jurisdiction of the state. The fee for each permit shall be as provided for in section 36-416, Idaho Code.

14. Adopt rules governing the application for and issuance of licenses by telephone and other electronic methods.

15. Enter into agreements with cities, counties, recreation districts or other political subdivisions for the lease of lands or waters, in accordance with all other applicable laws, including applicable provisions of titles 42 and 43, Idaho Code, to cost-effectively provide recreational opportunities for taxpayers or residents of those local governments or political subdivisions.

16. Adopt rules governing a mentored hunting program.

(c) Limitation on Powers. Nothing in this title shall be construed to authorize the commission to change any penalty prescribed by law for a violation of its provisions, or to change the amount of license fees or the authority conferred by licenses prescribed by law.

(d) Organization of Work. The commission shall organize the department, in accordance with the provisions of title 67, Idaho Code, into administrative units as may be necessary to efficiently administer said department. All employees of the department except the director shall be selected and appointed by the director in conformance with the provisions of chapter 53, title 67, Idaho Code.

**History.**

I.C., § 36-104, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 116, § 1, p. 249; am. 1986, ch. 52, § 1, p. 149; am. 1986, ch. 288, § 1, p. 724; am. 1986, ch. 329, § 1, p. 809; am. 1987, ch. 159, § 1, p. 311; am. 1989, ch. 316, § 1, p. 812; am. 1989, ch. 372, § 1, p. 937; am. 1990, ch. 372, § 1, p. 1023; am. 1992, ch. 81, § 1, p. 222; am. 1993, ch. 197, § 1, p. 539; am.

1993, ch. 216, § 17, p. 587; am. 1994, ch. 82, § 1, p. 190; am. 1994, ch. 218, § 5, p. 679; am. 1995, ch. 64, § 1, p. 158; am. 1998, ch. 170, § 1, p. 567; am. 1999, ch. 372, § 1, p. 1016; am. 2000, ch. 211, § 1, p. 538; am. 2001, ch. 183, § 12, p. 613; am. 2002, ch. 224, § 1, p. 644; am. 2004, ch. 17, § 1, p. 16; am. 2009, ch. 201, § 1, p. 643; am. 2011, ch. 109, § 1, p. 280; am. 2014, ch. 104, § 1, p. 305.

**STATUTORY NOTES****Amendments.**

The 2014 amendment, by ch. 104, substi-

tuted "antelope, bear or turkey" for "or antelope" three times in paragraph (b)5.(B).

**36-106. Director of department of fish and game.** — (a) Office of Director Created. The commission shall appoint a director of the department of fish and game, hereinafter referred to as the director, who shall be a person with knowledge of, and experience in, the requirements for the protection, conservation, restoration, and management of the wildlife resources of the state. The director shall not hold any other public office, nor any office in any political party organization, and shall devote his entire time to the service of the state in the discharge of his official duties, under the direction of the commission.

(b) Secretary to Commission. The director or his designee shall serve as secretary to the commission.

(c) Compensation and Expenses. The director shall receive such compensation as the commission, with the concurrence and approval of the governor, may determine and shall be reimbursed at the rate provided by law for state employees for all actual and necessary traveling and other expenses incurred by him in the discharge of his official duties.

(d) Oath and Bond. Before entering upon the duties of his office, the director shall take and subscribe to the official oath of office, as provided by section 59-401, Idaho Code, and shall, in addition thereto, swear and affirm that he holds no other public office, nor any position under any political committee or party. Such oath, or affirmation, shall be signed in the office of the secretary of state.

The director shall be bonded to the state of Idaho in the time, form and manner prescribed by chapter 8, title 59, Idaho Code.

(e) Duties and Powers of Director.

1. The director shall have general supervision and control of all activities, functions, and employees of the department of fish and game, under the supervision and direction of the commission, and shall enforce all the provisions of the laws of the state, and rules and proclamations of the commission relating to wild animals, birds, and fish and, further, shall perform all the duties prescribed by section 67-2405, Idaho Code, and other laws of the state not inconsistent with this act, and shall exercise all necessary powers incident thereto not specifically conferred on the commission.

2. The director is hereby authorized to appoint as many classified employees as the commission may deem necessary to perform adminis-



trative duties, to enforce the laws and to properly implement management, propagation, and protection programs established for carrying out the purposes of the Idaho fish and game code.

3. The appointment of such employees shall be made by the director in accordance with chapter 53, title 67, Idaho Code, and rules promulgated pursuant thereto, and they shall be compensated as provided therein. Said employees shall be bonded to the state of Idaho in the time, form, and manner prescribed by chapter 8, title 59, Idaho Code.

4. The director is hereby authorized to establish and maintain fish hatcheries for the purpose of hatching, propagating, and distributing all kinds of fish.

5.(A) The director, or any person appointed by him in writing to do so, may take wildlife of any kind, dead or alive, or import the same, subject to such conditions, restrictions and rules as he may provide, for the purpose of inspection, cultivation, propagation, distribution, scientific or other purposes deemed by him to be of interest to the fish and game resources of the state.

(B) The director shall have supervision over all of the matters pertaining to the inspection, cultivation, propagation and distribution of the wildlife propagated under the provisions of title 36, Idaho Code. He shall also have the power and authority to obtain, by purchase or otherwise, wildlife of any kind or variety which he may deem most suitable for distribution in the state and may have the same properly cared for and distributed throughout the state of Idaho as he may deem necessary.

(C) The director is hereby authorized to issue a license/tag/permit to a nonresident landowner who resides in a contiguous state for the purpose of taking one (1) animal during an emergency depredation hunt which includes the landowner's Idaho property subject to such conditions, restrictions or rules as the director may provide. The fee for this license/tag/permit shall be equal to the costs of a resident hunting license, a resident tag fee and a resident depredation permit.

(D) Unless relocation is required pursuant to subparagraph (E) herein, notwithstanding the provisions of section 36-408, Idaho Code, to the contrary, the director shall not expend any funds, or take any action, or authorize any employee or agent of the department or other person to take any action, to undertake actual transplants of bighorn sheep into areas they do not now inhabit for the purpose of augmenting existing populations until:

(i) The boards of county commissioners of the counties in which the release is proposed to take place have been given reasonable notice of the proposed release.

(ii) The affected federal and state land grazing permittees and owners or leaseholders of private land in or contiguous to the proposed release site have been given reasonable notice of the proposed release.

(iii) The president pro tempore of the senate and the speaker of the house of representatives have received from the director a plan for the

forthcoming year that details, to the best of the department's ability, the proposed transplants which shall include the estimated numbers of bighorn sheep to be transplanted and a description of the areas the proposed transplant or transplants are planned for.

Upon request, the department shall grant one (1) hearing per transplant or relocation if any affected individual or entity expresses written concern within ten (10) days of notification regarding any transplants or relocations of bighorn sheep and shall take into consideration these concerns in approving, modifying or canceling any proposed bighorn sheep transplant or relocation. Any such hearing shall be held within thirty (30) days of the request. It is the policy of the state of Idaho that existing sheep or livestock operations in the area of any bighorn sheep transplant or relocation are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted. Prior to any transplant or relocation of bighorn sheep into areas they do not now inhabit or a transplant or relocation for the purpose of augmenting existing populations, the department shall provide for any affected federal or state land grazing permittees or owners or leaseholders of private land a written agreement signed by all federal, state and private entities responsible for the transplant or relocation stating that the existing sheep or livestock operations in the area of any such bighorn sheep transplant or relocation are recognized and that the potential risk, if any, of disease transmission and loss of bighorn sheep when the same invade domestic livestock or sheep operations is accepted.

(E) The Idaho department of fish and game: (1) shall develop a state management plan to maintain a viable, self-sustaining population of bighorn sheep in Idaho which shall consider as part of the plan the current federal or state domestic sheep grazing allotment(s) that currently have any bighorn sheep upon or in proximity to the allotment(s); (2) within ninety (90) days of the effective date of this act will cooperatively develop best management practices with the permittee(s) on the allotment(s). Upon commencement of the implementation of best management practices, the director shall certify that the risk of disease transmission, if any, between bighorn and domestic sheep is acceptable for the viability of the bighorn sheep. The director's certification shall continue for as long as the best management practices are implemented. The director may also certify that the risk of disease transmission, if any, between bighorn and domestic sheep is acceptable for the viability of the bighorn sheep based upon a finding that other factors exist, including but not limited to previous exposure to pathogens that make separation between bighorn and domestic sheep unnecessary.

6.(A) The director shall have the power, at any time when it is desired to introduce any new species, or if at any time any species of wildlife of the state of Idaho shall be threatened with excessive shooting, trapping, or angling or otherwise, to close any open season or to reduce the bag limit or possession limit for such species for such time as he may designate;



in the event an emergency is declared to exist such closure shall become effective forthwith upon written order of the director; in all other cases upon publication and posting as provided in section 36-105, Idaho Code. (B) In order to protect property from damage by wildlife, including bear and turkey, the fish and game commission may delegate to the director or his designee the authority to declare an open season upon that particular species of wildlife to reduce its population. The director or his designee shall make an order embodying his findings in respect to when, under what circumstances, in which localities, by what means, and in what amounts, numbers and sex the wildlife subject to the hunt may be taken. In the event an emergency is declared to exist such open season shall become effective forthwith upon written order of the director or his designee; in all other cases upon publication and posting as provided in section 36-105, Idaho Code.

(C) Any season closure order issued under authority hereof shall be published in at least one (1) newspaper of general circulation in the area affected by the order for at least once a week for two (2) consecutive weeks, and such order shall be posted in public places in each county as the director may direct.

(D) During the closure of any open season or the opening of any special depredation season by the director all provisions of laws relating to the closed season or the special depredation season on such wildlife shall be in force and whoever violates any of the provisions shall be subject to the penalties prescribed therefor.

(E) Prior to the opening of any special depredation hunt, the director or his designee shall be authorized to provide up to a maximum of fifty percent (50%) of the available permits for such big game to the landholder(s) of privately owned land within the hunt area or his designees. If the landholder(s) chooses to designate hunters, he must provide a written list of the names of designated individuals to the department. If the landholder(s) fails to designate licensed hunters, then the department will issue the total available permits in the manner set by rule. All hunters must have a current hunting license and shall have equal access to both public and private lands within the hunt boundaries. It shall be unlawful for any landholder(s) to receive any form of compensation from a person who obtains or uses a depredation controlled hunt permit.

7. The director shall make an annual report to the governor, the legislature, and the secretary of state, of the doings and conditions of his office, which report shall be made in accordance with section 67-2509, Idaho Code.

8. The director may sell or cause to be sold publications and materials in accordance with section 59-1012, Idaho Code.

9. Any deer, elk, antelope, moose, bighorn sheep or bison imported or transported by the department of fish and game shall be tested for the presence of certain communicable diseases that can be transmitted to domestic livestock. Those communicable diseases to be tested for shall be arrived at by mutual agreement between the department of fish and game



and the department of agriculture. Any moneys expended by the department of fish and game on wildlife disease research shall be mutually agreed upon by the department of fish and game and the department of agriculture.

In addition, a comprehensive animal health program for all deer, elk, antelope, moose, bighorn sheep, or bison imported into, transported, or resident within the state of Idaho shall be implemented after said program is mutually agreed upon by the department of fish and game and the department of agriculture.

10. In order to monitor and evaluate the disease status of wildlife and to protect Idaho's livestock resources, any suspicion by fish and game personnel of a potential communicable disease process in wildlife shall be reported within twenty-four (24) hours to the department of agriculture. All samples collected for disease monitoring or disease evaluation of wildlife shall be submitted to the division of animal industries, department of agriculture.

11.(A) The director is authorized to enter into an agreement with an independent contractor for the purpose of providing a telephone order and credit card payment service for controlled hunt permits, licenses, tags, and permits.

(B) The contractor may collect a fee for its service in an amount to be set by contract.

(C) All moneys collected for the telephone orders of such licenses, tags, and permits shall be and remain the property of the state, and such moneys shall be directly deposited by the contractor into the state treasurer's account in accordance with the provisions of section 59-1014, Idaho Code. The contractor shall furnish a good and sufficient surety bond to the state of Idaho in an amount sufficient to cover the amount of the telephone orders and potential refunds.

(D) The refund of moneys for unsuccessful controlled hunt permit applications and licenses, tags, and permits approved by the department may be made by the contractor crediting the applicant's or licensee's credit card account.

12. The director may define activities or facilities that primarily provide a benefit: to the department; to a person; for personal use; to a commercial enterprise; or for a commercial purpose.

#### History.

I.C., § 36-106, as added by 1976, ch. 95, § 2, p. 315; am. 1983, ch. 59, § 2, p. 136; am. 1984, ch. 154, § 1, p. 368; am. 1987, ch. 211, § 2, p. 444; am. 1988, ch. 260, § 1, p. 504; am. 1989, ch. 284, § 1, p. 695; am. 1990, ch. 9, § 1, p. 15; am. 1990, ch. 10, § 1, p. 18; am. 1993, ch. 309, § 1, p. 1140; am. 1994, ch. 82, § 2, p.

190; am. 1994, ch. 218, § 4, p. 679; am. 1997, ch. 284, § 1, p. 863; am. 1998, ch. 170, § 3, p. 567; am. 1999, ch. 370, § 22, p. 976; am. 2000, ch. 211, § 2, p. 538; am. 2004, ch. 176, § 1, p. 555; am. 2005, ch. 35, § 1, p. 151; am. 2009, ch. 314, § 1, p. 913; am. 2014, ch. 104, § 2, p. 305.

#### STATUTORY NOTES

#### Amendments.

The 2014 amendment, by ch. 104, inserted

"including bear and turkey" in the first sentence in paragraph (e)6.(B).

**Compiler's Notes.**

The words "this act", in subdivision (e)1, refer to S.L. 1976, ch. 95, which is compiled as § 22-102A and throughout Title 36. Probably, this reference should be to "this title", being title 36, Idaho Code.

The Idaho fish and game code, referred to at the end of subdivision (e)2, is not defined statutorily. It is believed to be a reference to all of title 36, Idaho Code, as it was enacted by S.L. 1976, ch. 95, § 2.

The phrase "effective date of this act", in subdivision (e)5(E), refers to the effective date of S.L. 2009, ch. 314, which was May 7, 2009.

Section 67-2509, referred to in subdivision (e)7 of this section, was repealed by S.L. 1993, ch. 330, § 1.

The letter "s" enclosed in parentheses so appeared in the law as enacted.

**JUDICIAL DECISIONS****Bighorn Sheep.**

Idaho department of fish and game has no duty to indemnify domestic sheep owners for curtailment of grazing allotments by the United States forest service, because neither paragraph (e)(5)(D) of this section nor the

department's letter, accepting responsibility for disease transmission from domestic sheep to bighorns, imposed such a duty. *Idaho Wool Growers Ass'n v. State*, 154 Idaho 716, 302 P.3d 341 (2012).

**36-107. Fish and game account.** — (a) The director shall promptly transmit to the state treasurer all moneys received by him, from the sale of hunting, fishing and trapping licenses, tags and permits or from any other source connected with the administration of the provisions of the Idaho fish and game code or any law or regulation for the protection of wildlife, including moneys received from the sale of predatory animal furs taken under the provisions of this chapter, and the state treasurer shall deposit all such moneys in the fish and game account, which is hereby established, reserved, set aside, appropriated in the state treasury, and made available until expended as may be directed by the commission in carrying out the purposes of the Idaho fish and game code or any law or regulation promulgated for the protection of wildlife, and shall be used for no other purpose. Pending expenditure or use, surplus moneys in the fish and game account shall be invested by the state treasurer in the manner provided for idle state moneys in the state treasury by section 67-1210, Idaho Code. Interest received on all such investments shall be paid into the account. The state controller shall annually, by August 1 of each year, transfer the sum of one hundred thousand dollars (\$100,000) from the fish and game account to the University of Idaho Caine Veterinary Teaching and Research Center for disease research regarding the interaction of disease between wildlife and domestic livestock. Said moneys shall be expended on projects agreed upon by the University of Idaho Caine Veterinary Teaching and Research Center and the director of the department of fish and game.

(b) The commission shall govern the financial policies of the department and shall, as provided by law, fix the budget for the operation and maintenance of its work for each fiscal year. Said budget shall not be exceeded by the director.

(c) The sum of two dollars (\$2.00) from each license authorized in sections 36-406(a) and 36-407(b), Idaho Code, which entitles a person to fish, shall be used for the construction, repair, or rehabilitation of state fish hatcheries, fishing lakes, or reservoirs.

(d) The department is authorized to expend up to one dollar and fifty



cents (\$1.50) from each resident deer and elk tag sold and five dollars (\$5.00) from each nonresident deer and elk tag sold to fund the department's big game landowner-sportsman's relations program.

#### History.

I.C., § 36-107, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 212, § 1, p. 580; am. 1980, ch. 88, § 1, p. 191; am. 1981, ch. 97, § 3, p. 139; am. 1984, ch. 197, § 1, p. 368; am.

1985, ch. 154, § 1, p. 411; am. 1986, ch. 294, § 2, p. 739; am. 1990, ch. 372, § 2, p. 1023; am. 1990, ch. 388, § 1, p. 1067; am. 1992, ch. 140, § 1, p. 432; am. 1994, ch. 180, § 56, p. 420; am. 2013, ch. 69, § 1, p. 167.

### STATUTORY NOTES

#### Amendments.

The 2013 amendment, by ch. 69, substituted "director of the department of fish and game" for "state wildlife veterinarian" at the end of subsection (a).

#### Compiler's Notes.

The Idaho fish and game code, referred to in

this section, is not defined statutorily. It is believed to be a reference to all of title 36, Idaho Code, as it was enacted by S.L. 1976, ch. 95, § 2.

For additional information on the Caine Veterinary Teaching Center, see <http://www.cainecenter.uidaho.edu>.

**36-111. Fish and game set-aside account.** — (1) There is hereby established the fish and game set-aside account in the dedicated fund. The account shall have paid into it moneys as follows:

(a) Four dollars (\$4.00) of each steelhead trout or anadromous salmon permit sold. Moneys from this source shall be used for the acquisition, development and maintenance of parking areas, access sites, boat ramps and sanitation facilities in salmon and steelhead fishing areas, for management of and research on steelhead trout and anadromous salmon problems, and for technical assistance with litigation concerning steelhead and anadromous salmon originating in Idaho.

(b) Two dollars (\$2.00) from each combination hunting and fishing license, or each hunting license sold, as provided in sections 36-406 and 36-407, Idaho Code, except that class 4 licenses shall be exempt from this provision. Moneys from this source shall be used for the purposes of acquiring access to and acquiring and rehabilitating big game ranges and upland bird and waterfowl habitats. Unless it is inconsistent with the goals of the commission, it is the intent of the legislature that the commission negotiate lease arrangements as compared with outright purchase of private property.

(c) One dollar and fifty cents (\$1.50) from each antelope, elk and deer tag sold as provided in section 36-409, Idaho Code. Not less than seventy-five cents (75¢) of each one dollar and fifty cents (\$1.50) collected shall be placed in a separate account to be designated as a feeding account. Moneys in this account shall be used exclusively for the purposes of actual supplemental winter feeding of antelope, elk and deer. Moneys shall be used solely for the purchase of blocks, pellets and hay for such winter feeding purposes and/or for the purchase of seed or other material that can be shown to directly provide feed or forage for the winter feeding of antelope, elk and deer. The balance of moneys realized from this source may be used for the control of depredation of private property by antelope, elk and deer and control of predators affecting antelope, elk and deer.

Moneys in the feeding account shall not be used for any purpose other than winter feeding as herein specified. Moneys in the feeding account may not be expended except upon the declaration of a feeding emergency by the director of the department of fish and game. Such emergency need not exist on a statewide basis but can be declared with respect to one (1) or more regions of the state. The department shall by rule establish the criteria for a feeding emergency. The department shall submit a yearly report to the senate resources and environment committee and the house resources and conservation committee of the legislature on or before the 31st day of July, detailing how funds in the feeding account have been expended during the preceding fiscal year.

(d) Those amounts designated by individuals in accordance with section 63-3067A(3)(a), Idaho Code, and from fees paid under the provisions of section 49-417, Idaho Code. Moneys from these sources shall be used for a nongame management and protection program under the direction of the fish and game commission.

(e) Money derived from the assessment of processing fees. Moneys derived from this source shall be used as provided in section 36-1407, Idaho Code.

(2) Moneys in the fish and game set-aside account and the feeding account established in subsection (1)(c) of this section are subject to appropriation, and the provisions of section 67-3516, Idaho Code. Moneys in the fish and game set-aside account and the feeding account shall be invested by the state treasurer in the manner provided for investment of idle state moneys in the state treasury by section 67-1210, Idaho Code, with interest earned on investments from each account to be paid into that account.

#### **History.**

I.C., § 36-111, as added by 1990, ch. 388, § 7, p. 1067; am. 1992, ch. 190, § 2, p. 593; am. 1994, ch. 149, § 2, p. 342; am. 1994, ch.

269, § 1, p. 832; am. 2000, ch. 211, § 4, p. 538; am. 2008, ch. 218, § 1, p. 675; am. 2012, ch. 342, § 1, p. 954.

### **STATUTORY NOTES**

#### **Amendments.**

The 2012 amendment, by ch. 342, in subsection (c), substituted "actual supplemental winter feeding of" for "winter feeding of and rehabilitation of winter range for" in the third sentence, added the fourth sentence, deleted "until the total funds in the account, including any interest earnings thereon, equal or ex-

ceed four hundred thousand dollars (\$400,000)" from the end of the sixth sentence and added the last sentence.

#### **Compiler's Notes.**

S.L. 2012, Chapter 342 became law without the signature of the governor.

**36-125. Fixing assessment and fees for wildlife — Wolf control fund.** — From the effective date of this act through June 30, 2019, the fish and game commission shall comply with the provisions of section 22-5306, Idaho Code, in providing the wolf depredation control board with direction for use of fish and game funds transferred to the fish and game fund transfer subaccount of the wolf control fund made pursuant to the provisions of section 22-5306, Idaho Code.

**History.**

I.C., § 36-125, as added by 2014, ch. 188,  
§ 3, p. 500.

**STATUTORY NOTES****Cross References.**

Wolf depredation control board, § 22-5301.

**Legislative Intent.**

Section 1 of S.L. 2014, ch. 188 provided:  
“Legislative Intent. The Legislature finds that additional financial resources are needed to help continue in the implementation of Idaho’s wolf management plan. It is the intent of the Legislature to establish a governing board to provide funds for the management and control of depredating wolves in Idaho.”

**Compiler’s Notes.**

The phrase “the effective date of this act”

near the beginning of this section refers to the effective date of S.L. 2014, Chapter 188, which was effective March 26, 2014.

Section 7 of S.L. 2014, ch. 188 provided: “Nonseverability. If any section or provision of this act shall be adjudged unconstitutional or invalid for any reason, then such invalidity or unconstitutionality shall invalidate this act in its entirety and to this end and in this event the provisions of this act are declared to be nonseverable.”

**Effective Dates.**

Section 8 of S.L. 2014, ch. 188 declared an emergency. Approved March 26, 2014.

## CHAPTER 2

### CLASSIFICATIONS AND DEFINITIONS

#### 36-201. Fish and game commission authorized to classify wildlife.

**RESEARCH REFERENCES**

**Idaho Law Review.** — One Bird Causing a Big Conflict: Can Conservation Agreements

Keep Sage Grouse off the Endangered Species List?, Comment. 49 Idaho L. Rev. 621 (2013).

## CHAPTER 4

### LICENSES TO HUNT, FISH AND TRAP

**SECTION.**

36-404. Classes of licenses.

36-405. Application for license — Duplicate license — Unlawful purchase, possession, and use of license.

36-406. Resident fishing, hunting and trapping licenses — Fees.

36-407. Nonresident combination, fishing, hunting, and trapping licenses — Fees — Rights under.

**SECTION.**

36-408. Commission’s authority — Tags — Permits — Nonresidents limited — Outfitters set-aside.

36-409. Game tags — Permits — Fees — Penalty.

36-415. Discounted license fees.

36-416. Schedule of license fees.

**36-404. Classes of licenses.** — The licenses required by the provisions of this title shall be of eight (8) classes. Classes one (1) through five (5) and eight (8) in this section may be purchased or obtained only by persons who meet residency requirements under the provisions of section 36-202(s) and (t), Idaho Code, or who are valid holders of a lifetime license certificate.

Class 1: Adult Combination — Hunting — Fishing — Trapping Licenses. Licenses to be issued only to persons who are residents of the state of Idaho.

Class 2: Junior Hunting — Trapping.

(a) Junior hunting license. Licenses to be issued only to persons who are



residents of the state of Idaho and are between ten (10) and seventeen (17) years of age, inclusive. Provided, that a license may be issued to qualified persons who are nine (9) years of age to allow the application for a controlled hunt big game tag or turkey permit; however, said persons shall not hunt until they are ten (10) years of age. Persons with a junior hunting license who are ten (10) or eleven (11) years of age shall be accompanied in the field by an adult licensed to hunt in the state of Idaho.

(b) Junior trapping licenses. Licenses to be issued only to persons who are residents of the state of Idaho and are seventeen (17) years of age or younger.

Class 3: Junior Combination — Fishing Licenses. Licenses to be issued only to persons who are residents of the state of Idaho between fourteen (14) and seventeen (17) years of age, inclusive.

Class 4: Senior Resident Combination License. Licenses to be issued only to persons over sixty-five (65) years of age who have been bona fide residents of the state of Idaho for a continuous period of not less than five (5) years last preceding application.

Class 5: Resident Lifetime Combination — Hunting — Fishing License. Licenses to be issued only to persons who are valid holders of a lifetime license certificate.

Class 6: Nonresident Combination — Hunting — Fishing — Trapping — Junior Mentored Hunting — Disabled Hunting License for American Veteran Participating in a Hunt in Association with a Qualified Organization — Licenses. Licenses required of persons who are nonresidents.

Class 7: Duplicate License — Tag. A license or tag to be issued as a replacement for an original license or tag lost or mutilated. Said license or tag shall be issued in the same class and type as the original and upon issuance of such duplicate license or tag the original license or tag shall become null and void.

Class 8: Resident Hunting and Fishing License with Tags, Permits and Stamps. Licenses to be issued only to persons who meet residency requirements under the provisions of section 36-202(s) and (t), Idaho Code.

#### History.

I.C., § 36-404, as added by 1976, ch. 95, § 2, p. 315; am. 1983, ch. 56, § 1, p. 132; am. 1986, ch. 51, § 2, p. 145; am. 1986, ch. 52, § 2, p. 149; am. 1988, ch. 205, § 1, p. 385; am. 1996, ch. 185, § 1, p. 582; am. 1998, ch. 175,

§ 3, p. 615; am. 2000, ch. 211, § 7, p. 538; am. 2002, ch. 234, § 2, p. 684; am. 2008, ch. 98, § 1, p. 265; am. 2010, ch. 50, § 1, p. 94; am. 2011, ch. 88, § 1, p. 183; am. 2013, ch. 70, § 1, p. 169; am. 2014, ch. 81, § 1, p. 221.

#### STATUTORY NOTES

#### Amendments.

The 2013 amendment, by ch. 70, in the Class 2 provisions, deleted “Youth Small Game Licenses” from the end of the introductory language, substituted “ten (10)” for “twelve (12)” (twice), substituted “nine (9)” for “eleven (11)”, and added the last sentence in paragraph (a) and deleted former paragraph (c), relating to youth small game licenses; and deleted “Youth Small Game — Youth Hunter

Education Graduate” and substituted “Disabled Hunting License” for “Disabled Combination License” in the heading for Class 6 provisions.

The 2014 amendment, by ch. 81, in subsection (a) of Class 2, inserted “big game tag” in the second sentence and deleted “shall not hunt big game and said persons” following “eleven (11) years of age” in the last sentence.

**36-405. Application for license — Duplicate license — Unlawful purchase, possession, and use of license. —** (a) Application Required.

1. Any person making application for a senior resident license, or resident license shall provide his Idaho driver's license number as proof of residence, or in the case of nondrivers, other suitable proof of residency, and state the class of license applied for, the name of the applicant, the age of the applicant, his date of birth, his length of residence, his current address, and such other information as may be required by the director.

2. Any person making application for a duplicate license shall state the type and class of license originally purchased and such other information as may be required by the director.

3. No person shall willfully make a false statement as to:

(A) Name, age, his date of birth, length of residence or current address when such statement is made for the purpose of obtaining any license.

(B) Type and class of original license purchased when applying for a duplicate license.

(b) Loss of License — New One Required. In case of loss of a license, a new one shall be required to entitle the person who lost the same to hunt, fish or trap. Such person may upon application:

1. Purchase a new license at the regular fee; or

2. Replace a lost license with a duplicate license for which a fee as specified in section 36-416, Idaho Code, shall be charged.

3. When a duplicate license has been issued the original license shall become null and void.

(c) Unlawful Purchase, Possession and Use of License.

1. Every person buying a license must buy a license of the proper type or class according to his residence and age. No person shall purchase or possess a license of the wrong class and such license shall be void and of no effect from the date of issuance.

2. No person shall:

(A) Acquire more than one (1) regular controlled hunt permit per species or more tags per species than the commission has set a bag limit for that species except as provided in subsection (b) of this section or to have said permits or tags in his possession.

(B) Transfer any fishing, hunting, or trapping license to any other person or for any person to make use of such license issued to any other person with the exception of a parent or grandparent designating any controlled hunt tag or controlled hunt permit to his or her minor child or grandchild as prescribed by rules of the commission. A controlled hunt tag or controlled hunt permit can be designated only to a minor child with a valid hunting license or one who is participating in a mentored hunting program as prescribed by rules of the commission. A controlled hunt tag or controlled hunt permit designated to a minor child cannot be sold.

**History.**

I.C., § 36-405, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 339, § 1, p. 872; am. 1990, ch. 8, § 1, p. 13; am. 1992, ch. 81, § 6, p.

222; am. 1995, ch. 63, § 1, p. 157; am. 1995, ch. 64, § 5, p. 158; am. 1995, ch. 287, § 11, p. 951; am. 2000, ch. 211, § 8, p. 538; am. 2012, ch. 161, § 1, p. 436.



## STATUTORY NOTES

**Amendments.**

The 2012 amendment, by ch. 161, in paragraph (c)2.(B), added “with the exception of a parent or grandparent designating any con-

trolled hunt tag or controlled hunt permit to a minor child or grandchild as prescribed by rules of the commission” in the first sentence and added the last two sentences.

**36-406. Resident fishing, hunting and trapping licenses — Fees.**

— (a) **Adult Licenses — Combination — Fishing — Hunting — Trapping.** A license of the first class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to hunt and fish for game animals, game birds, unprotected and predatory wildlife and fish of the state, a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to fish in the public waters of the state, a fee as specified in section 36-416, Idaho Code, for a hunting license entitling the purchaser to hunt game animals, game birds, unprotected and predatory wildlife of the state, and a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to trap wolves, furbearing animals and unprotected and predatory wildlife of the state.

(b) **Junior Licenses — Hunting — Trapping.** A license of the second class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a hunting license, and a fee as specified in section 36-416, Idaho Code, for a trapping license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(c) **Junior Combination — Fishing Licenses.** A license of the third class may be purchased by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(d) **Senior Resident Combination.** A license of the fourth class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to the same privileges as the corresponding license of the first class provides.

(e) **Lifetime Licenses — Combination — Hunting — Fishing.** A license of the fifth class may be obtained at no additional charge by a person possessing the qualifications therein described for a combined hunting and fishing license, for a hunting license, or for a fishing license, entitling the person to the same privileges as the corresponding license of the first class provides. Lifetime licensees must be certified under the provisions of section 36-413, Idaho Code, before being issued a license to hunt.

(f) A license of the eighth class may be had by a person possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, entitling the purchaser to hunt and fish for game animals, game birds, fish, and unprotected and predatory wildlife of the state. With payment of the required fee, a person shall receive with this

license a deer tag, an elk tag, a bear tag, a turkey tag, a mountain lion tag, a wolf tag, an archery hunt permit, a muzzleloader permit, a steelhead trout permit and an anadromous salmon permit. The director shall promptly transmit to the state treasurer all moneys received pursuant to this subsection for deposit as follows:

- (i) Four dollars (\$4.00) in the fish and game set-aside account for the purposes of section 36-111(1)(a), Idaho Code;
- (ii) Two dollars (\$2.00) in the fish and game set-aside account for the purposes of section 36-111(1)(b), Idaho Code;
- (iii) One dollar and fifty cents (\$1.50) in the fish and game set-aside account for the purposes of section 36-111(1)(c), Idaho Code; and
- (iv) The balance in the fish and game account.

All persons purchasing a license pursuant to this subsection shall observe and shall be subject to all rules of the commission regarding the fish and wildlife of the state.

If the purchaser of this license does not meet the archery education requirements of section 36-411(b), Idaho Code, then, notwithstanding the provisions of section 36-304, Idaho Code, the archery hunt permit portion of this license is invalid. The fee for this license will not change and the license must be issued without the archery permit validation.

(g) Disabled Persons Licenses — Combination — Fishing. A license of the first class may be had by any resident disabled person on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license, entitling the purchaser to the same privileges as the corresponding license of the first class provides. A disabled person means a person who is deemed disabled by one (1) or more, but not necessarily all, of the following: the railroad retirement board pursuant to title 45 of the United States Code, or certified as eligible for federal supplemental security income (SSI); or social security disability income (SSDI); or a nonservice-connected veterans pension; or a service-connected veterans disability benefit with forty percent (40%) or more disability; or certified as permanently disabled by a physician. Once determination of permanent disability has been made with the department, the determination shall remain on file within the electronic filing system and the license holder shall not be required to present a physician's determination each year or prove their disability each year.

(h) Military Furlough Licenses — Combination — Fishing. A license of the first class may be had by a resident person engaged in the military service of the United States, while on temporary furlough or leave, possessing the qualifications therein described on payment of a fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and as specified in section 36-416, Idaho Code, for a fishing license.

[(i)](j) Adult Licenses — Three Year — Combination — Fishing — Hunting. A license of the first class may be had by a person possessing the qualifications therein described on payment of three (3) times the fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to hunt and fish for game animals, game



birds, fish, unprotected and predatory wildlife of the state, three (3) times the fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to fish in the public waters of the state, or three (3) times the fee as specified in section 36-416, Idaho Code, for a hunting license entitling the purchaser to hunt game animals, game birds, unprotected and predatory wildlife of the state. The expiration date for said licenses shall be December 31 of the third year following the date of issuance.

[(j)](k) Junior Licenses — Three Year — Hunting. A license of the second class may be had by a person possessing the qualifications therein described on payment of three (3) times the fee as specified in section 36-416, Idaho Code, for a hunting license. The expiration date for said license shall be December 31 of the third year following the date of issuance.

[(k)](l) Junior Licenses — Three Year — Combination — Fishing Licenses. A license of the third class may be purchased by a person possessing the qualifications therein described on payment of three (3) times the fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license and three (3) times the fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to the same privileges as the corresponding license of the first class provides. The expiration date for said licenses shall be December 31 of the third year following the date of issuance.

[(l)](m) Senior Resident Combination License — Three Year. A license of the fourth class may be had by a person possessing the qualifications therein described on payment of three (3) times the fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license entitling the purchaser to the same privileges as the corresponding license of the first class provides. The expiration date for said license shall be December 31 of the third year following the date of issuance.

[(m)](n) Disabled Persons Licenses — Three Year — Combination — Fishing. A license of the ninth class may be had by any resident disabled person possessing the qualifications therein described on payment of three (3) times the fee as specified in section 36-416, Idaho Code, for a combined fishing and hunting license, and a fee as specified in section 36-416, Idaho Code, for a fishing license entitling the purchaser to the same privileges as the corresponding license of the first class provides. The expiration date for said licenses shall be December 31 of the third year following the date of issuance.

#### History.

I.C., § 36-406, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 339, § 2, p. 872; am. 1981, ch. 98, § 1, p. 142; am. 1986, ch. 52, § 3, p. 149; am. 1988, ch. 205, § 2, p. 385; am. 1990, ch. 372, § 3, p. 1023; am. 1990, ch. 388, § 9, p. 1067; am. 1994, ch. 84, § 1, p. 198; am. 1995, ch. 287, § 12, p. 951; am. 1998, ch. 298,

§ 2, p. 984; am. 1998, ch. 357, § 3, p. 1116; am. 1999, ch. 32, § 1, p. 63; am. 2000, ch. 211, § 9, p. 538; am. 2001, ch. 158, § 1, p. 565; am. 2002, ch. 234, § 3, p. 684; am. 2006, ch. 168, § 1, p. 518; am. 2008, ch. 98, § 2, p. 266; am. 2010, ch. 50, § 2, p. 94; am. 2012, ch. 201, § 1, p. 536; am. 2013, ch. 70, § 2, p. 169; am. 2013, ch. 71, § 1, p. 177.

#### STATUTORY NOTES

#### Amendments.

The 2012 amendment, by ch. 201, inserted

“a wolf tag”, in the second sentence in the introductory paragraph of subsection (f).

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 70, substituted “predatory wildlife” for “predatory animals” three times in subsection (a) and once in the introductory paragraph in subsection (f); substituted “wolves, furbearing animals and” for “furbearers” near the end of subsection (a); inserted “fish and game” in paragraphs (f)(i), (f)(ii), and (f)(iii); and deleted former subsection (i), concerning youth small game licenses.

The 2013 amendment, by ch. 71, inserted

“fish and game” in paragraphs (f)(i), (f)(ii), and (f)(iii) and added subsections [(i)](j) through [(m)](n).

#### Compiler’s Notes.

The words enclosed in parentheses so appeared in the law as enacted.

The bracketed designations in subsections [(i)] through [(m)] were added by the compiler to account for the deletion of former subsection (i) by S.L. 2013, ch. 70, § 2 and the addition of new subsections by S.L. 2013, ch. 71, § 1.

**36-407. Nonresident combination, fishing, hunting, and trapping licenses — Fees — Rights under.** — Licenses of the sixth class shall be issued to nonresidents in the several kinds and for fees as follows:

(a) **Nonresident Hunting with Three Day Fishing License.** A license issued only to a person twelve (12) years of age or older entitling said person to hunt game animals, game birds and unprotected and predatory wildlife and to purchase game tags as provided in section 36-409(b), Idaho Code, and to fish in the waters of the state for a period of three (3) consecutive days for any fish during an open season for those fish, excluding steelhead trout and anadromous salmon. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt tag; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(b) **Nonresident Season Fishing License.** A license entitling a person to fish in the public waters of the state. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(c) **Nonresident Trapping License.** A license entitling a person to trap wolves, furbearing, unprotected and predatory wildlife. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code, providing the state of residence of said person grants similar trapping license privileges to residents of Idaho.

(d) **Nonresident Nongame License.** A nonresident nongame license to hunt is a license entitling a person to hunt unprotected birds and animals and predatory wildlife of this state. A license of this kind may be had by a nonresident person who is twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code.

(e) **Nonresident Small Game Hunting License.** A license issued only to a person twelve (12) years of age or older, entitling the person to hunt upland game birds (to include turkeys), migratory game birds, upland game animals, huntable furbearing animals, and unprotected and predatory wildlife of this state. A person holding this license shall purchase the appropriate required tags and permits, and may not hunt pheasants in an area during the first five (5) days of the pheasant season in that area. A license of this type may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(f) **Falconry Meet Permit.** The director may issue a special permit for a



regulated meet scheduled for a specific number of days upon payment of a fee as specified in section 36-416, Idaho Code. Only trained raptors may be used under the special permit issued under the provisions of this subsection.

(g) **Daily Fishing License — Resident May Purchase.** A license entitling a person to fish in the waters of the state on a day-to-day basis. A license of this kind may be had by a resident or nonresident person (the provisions of section 36-405, Idaho Code, notwithstanding), upon payment of a fee as specified in section 36-416, Idaho Code, for the first effective day and a fee as specified in section 36-416, Idaho Code, for each consecutive day thereafter.

(h) **Nonresident Three Day Fishing License with Steelhead or Salmon Permit.** A license entitling a nonresident to fish in the waters of the state for a period of three (3) consecutive days for any fish, including steelhead trout or anadromous salmon during an open season for those fish may be had upon payment of a fee as specified in section 36-416, Idaho Code. The three (3) day license holder may fish for any species of fish, steelhead trout and anadromous salmon subject to the limitations prescribed in rules promulgated by the commission. A nonresident may purchase as many of the licenses provided in this subsection as he desires provided that the nonresident is otherwise eligible to do so.

(i) **Nonresident Junior Fishing License.** A license entitling a nonresident who is less than eighteen (18) years of age to fish in the waters of this state may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(j) **Nonresident Combination Licenses.** A license entitling the person to hunt and fish for game animals, game birds, fish and unprotected and predatory wildlife of the state and to purchase game tags as provided in section 36-409(b), Idaho Code, may be had by a person twelve (12) years of age or older upon payment of a fee as specified in section 36-416, Idaho Code. A license may be issued to a qualified person who is eleven (11) years of age to allow the application for a controlled hunt tag; however, the person shall not hunt until he is twelve (12) years of age.

(k) **Nonresident Junior Mentored Hunting License.** A license entitling a nonresident between ten (10) and seventeen (17) years of age, inclusive, to hunt big game animals, upland game birds (including turkeys), migratory game birds, upland game animals, huntable furbearing animals and unprotected and predatory wildlife of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required tags as provided in section 36-409(b), Idaho Code, and permits. Provided, that a license may be issued to qualified persons who are nine (9) years of age to allow the application for a controlled hunt big game tag or turkey permit; however, said persons shall not hunt until they are ten (10) years of age. A license of this kind may be had upon payment of a fee as specified in section 36-416, Idaho Code.

(l) **Nonresident Disabled American Veteran Hunting with Three Day Fishing License.** A license entitling a person with a service-connected veterans disability benefit with forty percent (40%) or more disability to hunt game animals, game birds and unprotected and predatory wildlife and to purchase game tags provided in section 36-409(b), Idaho Code, and to fish

in the waters of the state for a period of three (3) consecutive days for any fish during an open season for those fish, excluding steelhead trout and anadromous salmon.

(m) Nonresident Hunting License — Three Year. A license issued only to a person twelve (12) years of age or older entitling said person to hunt game birds, game animals, unprotected and predatory wildlife and to purchase game tags as provided in section 36-409(b), Idaho Code, and to fish in the waters of the state for a period of three (3) consecutive days in each license year for any fish during an open season for those fish, excluding steelhead trout and anadromous salmon. Provided, that a license may be issued to qualified persons who are eleven (11) years of age to allow the application for a controlled hunt tag; however, said persons shall not hunt until they are twelve (12) years of age. A license of this kind may be had upon payment of three (3) times the fee as specified in section 36-416, Idaho Code. The expiration date for said license shall be December 31 of the third year following the date of issuance.

(n) Nonresident Season Fishing License — Three Year. A license entitling a person to fish in the public waters of the state. A license of this kind may be had upon payment of three (3) times the fee as specified in section 36-416, Idaho Code, for a fishing license. The expiration date for said license shall be December 31 of the third year following the date of issuance.

(o) Nonresident Combination Licenses — Three Year. A license entitling the person to hunt and fish for game animals, game birds, fish and unprotected and predatory wildlife of the state may be had by a person twelve (12) years of age or older upon payment of three (3) times the fee as specified in section 36-416, Idaho Code, for a combined hunting and fishing license. A license may be issued to a qualified person who is eleven (11) years of age to allow the application for a controlled hunt tag; however, the person shall not hunt until he is twelve (12) years of age. The expiration date for said license shall be December 31 of the third year following the date of issuance.

(p) Nonresident Junior Mentored Hunting License — Three Year. A license entitling a nonresident between ten (10) and seventeen (17) years of age, inclusive, to hunt game animals, upland game birds (including turkeys), migratory game birds, and unprotected and predatory wildlife of this state only when accompanied in the field by the holder of an adult Idaho hunting license. A person holding this license shall purchase the appropriate required tags as provided in section 36-409(b), Idaho Code, and permits. Provided, that a license may be issued to qualified persons who are nine (9) years of age to allow the application for a controlled hunt turkey permit; however, said persons shall not hunt until they are ten (10) years of age. A license of this kind may be had upon payment of three (3) times the fee as specified in section 36-416, Idaho Code, for a junior mentored hunting license. The expiration date for said license shall be December 31 of the third year following the date of issuance.

**History.**

I.C., § 36-407, as added by 1976, ch. 95, § 2, p. 315; am. 1980, ch. 339, § 3, p. 872; am.

1981, ch. 98, § 2, p. 142; am. 1985, ch. 65, § 1, p. 135; am. 1986, ch. 7, § 1, p. 46; am. 1986, ch. 16, § 1, p. 56; am. 1986, ch. 52, § 4, p. 149;



am. 1986, ch. 138, § 1, p. 373; am. 1986, ch. 244, § 1, p. 662; am. 1988, ch. 206, § 1, p. 387; am. 1990, ch. 372, § 4, p. 1023; am. 1990, ch. 388, § 10, p. 1067; am. 1993, ch. 27, § 1, p. 93; am. 1995, ch. 287, § 13, p. 951; am. 1996, ch. 185, § 2, p. 582; am. 1998, ch. 47, § 1, p. 194; am. 1998, ch. 213, § 1, p. 742; am. 1999, ch. 43, § 1, p. 103; am. 2000, ch. 211, § 11, p.

538; am. 2002, ch. 234, § 4, p. 684; am. 2008, ch. 59, § 1, p. 148; am. 2008, ch. 98, § 3, p. 268; am. 2010, ch. 50, § 3, p. 94; am. 2011, ch. 88, § 2, p. 183; am. 2012, ch. 100, § 1, p. 264; am. 2013, ch. 70, § 3, p. 169; am. 2013, ch. 71, § 2, p. 177; am. 2014, ch. 81, § 2, p. 221; am. 2014, ch. 267, § 1, p. 665.

## STATUTORY NOTES

### Amendments.

The 2012 amendment, by ch. 100, in subsection (a), inserted “With Three Day Fishing” in the paragraph heading and inserted “and to fish in the waters of the state for a period of three (3) consecutive days for any fish during an open season for those fish, excluding steelhead trout and anadromous salmon” at the end of the first sentence.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendment, by ch. 70, rewrote the section, deleting former subsections (l) and (m), relating to nonresident youth small game licenses and youth hunter education graduate licenses.

The 2013 amendment, by ch. 71, added subsections [(m)](o) through [(p)](r).

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 81, in subsection (k), inserted “big game tag” in the third sentence, and deleted the former fourth sentence, which read “Persons with a nonresident junior mentored hunting license who are

ten (10) or eleven (11) years of age shall not hunt big game animals”; and added “and to fish in the waters of the state for a period of three (3) consecutive days in each license year for any fish during an open season for those fish, excluding steelhead trout and anadromous salmon” at the end of the first sentence of present subsection (m).

The 2014 amendment, by ch. 267, corrected designation errors created by the multiple 2013 amendments of this section; rewrote subsection (l), which formerly read: “Nonresident Disabled American Veteran. A license entitling a person to participate in a hunt in association with a qualified organization. ‘Qualified organization,’ as used in association with these licenses, shall be as defined in section 36-408(7), Idaho Code”; and added “and to fish in the waters of the state for a period of three (3) consecutive days in each license year for any fish during an open season for those fish, excluding steelhead trout and anadromous salmon” at the end of the first sentence in subsection (m).

### Effective Dates.

Section 3 of S.L. 2014, ch. 267 declared an emergency. Approved March 26, 2014.

**36-408. Commission’s authority — Tags — Permits — Nonresidents limited — Outfitters set-aside.** — (1) Tags and Permits — Method of Use. The commission is hereby authorized to prescribe the number and kind of wildlife that may be taken under authority of the several types of tags and permits provided for in this title and the manner in which said tags and permits shall be used and validated.

(2) Limit — Licenses, Tags or Permits — Controlled Hunts. The commission is hereby authorized to establish a limit annually as to the number of each kind and class of licenses, tags, or permits to be sold or issued and is further authorized to limit the number or prohibit entirely the participation by nonresidents in controlled hunts.

(3) Outfitters Set-Aside. When the commission establishes a limit as to the number of nonresident deer tags and nonresident elk tags, it shall set aside annually a maximum of twenty-five percent (25%) of the nonresident deer tag and nonresident elk tag limit. The set-aside tags shall be sold pursuant to commission rule, only to persons that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.



In order for a person to purchase any set-aside nonresident deer tag or nonresident elk tag, that person's outfitter must submit an application with the proper fees as required by the director. If any nonresident deer tags or nonresident elk tags set aside pursuant to this subsection are unsold by July 1 of the year in which they were set aside, they may be sold by the department to the general public who are nonresidents. The commission may promulgate all necessary rules to implement the provisions of this subsection.

(4) **Deer and Elk Tag Allocation.** If the commission limits the number of deer or elk tags available for use in any game management area, unit or zone, the commission may allocate by rule a number of deer or elk tags for use by hunters that have entered into an agreement for that year to utilize the services of an outfitter licensed pursuant to chapter 21, title 36, Idaho Code.

(5) **Special Game Tags.** The commission is hereby authorized to issue two (2) special bighorn sheep tags per year.

(a) **Auction bighorn sheep tag.** One (1) special bighorn sheep tag shall be auctioned off by an incorporated nonprofit organization dedicated to wildlife conservation, selected by the commission. The tag shall be issued by the department of fish and game to the highest eligible bidder. No more than five percent (5%) of all proceeds for the tag may be retained by the organization. The tag to be issued pursuant to this subsection shall be taken from the nonresident bighorn sheep tag quota. The net proceeds shall be forwarded to the director for deposit in the fish and game expendable trust account and shall be used for bighorn sheep research and management purposes. Moneys raised pursuant to this subsection may not be used to transplant additional bighorn sheep into that portion of southwest Idaho south of the Snake river and west of U.S. highway no. 93, nor for litigation or environmental impact statements involving bighorn sheep. No transplants of bighorn sheep accomplished with moneys raised pursuant to this subsection shall occur in any area until hearings are conducted in the area. Provided however, that none of the proceeds generated from the auction of bighorn sheep tags pursuant to this paragraph be used to purchase or acquire private property or federally managed grazing permits, nor shall any proceeds generated be used for matching funds for the purchase of private property or the retirement or the acquisition of federally managed grazing permits.

(b) **Lottery bighorn sheep tag.** The commission is also authorized to issue one (1) special bighorn sheep tag, which will be disposed of by lottery. The lottery permit can be marketed by the department of fish and game or a nonprofit organization dedicated to wildlife conservation selected by the commission. The tag will be issued by the department of fish and game to an eligible person drawn from the lottery provided in this subsection. No more than twenty-five percent (25%) of gross revenue can be retained for administrative costs by the organization. All net proceeds for the tag disposed of by lottery pursuant to this subsection shall be remitted to the department and deposited in the fish and game expendable trust account. Moneys in the account from the lottery bighorn sheep tag shall be utilized

by the department in solving problems between bighorn sheep and domestic sheep, solving problems between wildlife and domestic animals or improving relationships between sportsmen and private landowners.

(6) Issuance of Free Permit or Tag to Minor Children with Life-Threatening Medical Conditions. Notwithstanding any other provision of law, the commission may issue free big game permits or tags to minor children who have life-threatening medical conditions that have been certified eligible by a qualified organization. The commission may prescribe by rule the manner and conditions of issuing and using the permits or tags authorized under this subsection. For purposes of this subsection, a “qualified organization” means a nonprofit organization that is qualified under section 501(c)(3) of the Internal Revenue Code and that affords opportunities and experiences to minor children with life-threatening medical conditions.

(7) Issuance of Free Permit or Tag to Military Veterans with Disabilities. Notwithstanding any other provision of law, the commission may issue free big game permits or tags to disabled military veterans who have been certified eligible by a qualified organization. The commission may prescribe by rule the manner and conditions of issuing and using the permits or tags authorized under this subsection. For purposes of this subsection, a “qualified organization” means a governmental agency that assists veterans or a nonprofit organization that is qualified under section 501(c)(3), 501(c)(4) or section 501(c)(19), of the Internal Revenue Code and that affords opportunities, experiences and assistance to disabled veterans.

(8) Special Wolf Tags. The commission is hereby authorized to issue up to ten (10) special auction or lottery tags for hunting wolves. Special wolf tags will be auctioned off or made available through lottery by incorporated nonprofit organizations dedicated to wildlife conservation and selected by the director. No more than five percent (5%) of all proceeds for each tag may be retained by the nonprofit organization for administrative costs involved. Each wolf tag shall be issued by the department of fish and game and awarded to the highest eligible bidder or winner of a lottery. Each tag will be good for the harvest of one (1) wolf pursuant to commission rule. The proceeds from each tag will be sent to the director to be placed in the department general license fund.

(9) Special Big Game Auction Tags — Governor’s Wildlife Partnership Tags. The commission is hereby authorized to issue special big game auction tags hereafter named and referred to as “Governor’s wildlife partnership tags” for hunting designated species on dates and in areas designated by the commission. To enhance and sustain the value of Idaho’s wildlife, up to three (3) tags per species per year may be issued for deer, elk and pronghorn antelope, one (1) tag per year may be issued for moose, and one (1) tag per species per year may be issued for mountain goat and bighorn sheep. Each tag will be signed by the governor of Idaho prior to auction to the public and be available to either residents or nonresidents of Idaho. Governor’s wildlife partnership tags issued for deer, elk, pronghorn antelope and moose pursuant to this subsection shall be taken from the nonresident controlled hunt programs for these species adopted by the fish and game commission. Governor’s wildlife partnership tags issued for mountain goat and bighorn



sheep shall be taken from the nonresident mountain goat and bighorn sheep quota. Governor's wildlife partnership tags shall be auctioned off by incorporated nonprofit organizations dedicated to wildlife conservation and selected by the director. No more than five percent (5%) of all proceeds from each tag sale may be retained by the nonprofit organization for administrative costs involved, including in the event a tag is redonated and reaucted. Each tag shall be issued by the department of fish and game and awarded to the highest eligible bidder. Each tag shall be good for the harvest of one (1) big game animal pursuant to commission rule consistent with the provisions of this subsection. The proceeds from each tag shall be sent to the director to be allocated up to thirty percent (30%) for sportsmen access programs, such as access yes, and the balance for wildlife habitat projects, wildlife management projects to increase the quantity and quality of big game herds, and other research and management activities approved by the commission. Provided however, that none of the proceeds generated from the auctions pursuant to the provisions of this subsection shall be used to purchase or acquire private property or federally managed grazing permits, nor shall any proceeds generated be used for matching funds for the purchase of private property or the retirement or the acquisition of federally managed grazing permits. Moneys raised pursuant to this subsection may not be used to transplant additional bighorn sheep into that portion of southwest Idaho south of the Snake river and west of U.S. highway no. 93, nor for litigation or environmental impact statements involving bighorn sheep.

#### History.

I.C., § 36-408, as added by 1976, ch. 95, § 2, p. 315; am. 1986, ch. 235, § 1, p. 646; am. 1987, ch. 322, § 1, p. 677; am. 1991, ch. 144, § 1, p. 342; am. 1995, ch. 287, § 14, p. 951; am. 1997, ch. 136, § 1, p. 404; am. 2001, ch.

170, § 1, p. 582; am. 2006, ch. 169, § 2, p. 520; am. 2007, ch. 73, § 1, p. 196; am. 2009, ch. 117, § 2, p. 373; am. 2009, ch. 314, § 2, p. 913; am. 2012, ch. 101, § 1, p. 270; am. 2012, ch. 254, § 1, p. 700; am. 2014, ch. 266, § 1, p. 662.

### STATUTORY NOTES

#### Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 101, inserted "or section 501(c)(19)" near the end of subsection (7).

The 2012 amendment, by ch. 254, added the last sentence in paragraph (5)(a) and added subsection (9).

The 2014 amendment, by ch. 266, inserted "501(c)(4)" near the end of subsection (7).

#### Federal References.

Section 501(c)(3) of the Internal Revenue Code, referred to in subsections (6) and (7), is codified as 26 USCS § 501(c)(3).

Sections 501(c)(4) and 501(c)(19) of the Internal Revenue Code, referred to in subsection (7), are codified as 26 U.S.C.S. §§ 501(c)(4) and 501(c)(19).

**36-409. Game tags — Permits — Fees — Penalty.** — (a) Resident Game Tags. A resident who has obtained authorization to hunt, as provided in section 36-401, Idaho Code, or has purchased or obtained a license to hunt, as provided in section 36-406, Idaho Code, upon payment of the fees provided herein shall be eligible to receive a resident game tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain

lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further, that any person who holds a senior resident combination license or any person who holds a junior combination or hunting license or any disabled American veteran who holds a disabled combination license, may be issued a bear, deer, elk, or turkey tag for a fee as specified in section 36-416, Idaho Code; provided further, that resident game tags may be issued only to those persons who meet residency requirements of subsection (s) of section 36-202, Idaho Code. In the event an emergency is declared to open a season to protect private property as provided in section 36-106(e)6.(B), Idaho Code, the affected landowner or his designee shall be eligible to receive a resident deer, elk or antelope tag without charge; provided further, that resident game tags may be issued only to persons who qualify as residents pursuant to section 36-202, Idaho Code.

(b) **Nonresident Game Tags.** A nonresident who has purchased a license to hunt, as provided in section 36-407(a) or (k), Idaho Code, or has obtained a license to hunt, as provided in section 36-406(e), Idaho Code, or a resident who has purchased or obtained a license or authorization to hunt, as provided in section 36-401 or 36-406, Idaho Code, upon payment of the fees provided herein, shall be eligible to receive a nonresident tag to hunt and kill a moose, bighorn sheep, mountain goat, elk, deer, antelope, mountain lion, bear, wolf, sandhill crane or turkey in accordance with the laws of this state and rules promulgated by the commission; provided further that a nonresident who has purchased a license to hunt, as provided in section 36-407(k), Idaho Code, shall be eligible to receive a junior mentored deer, elk, bear, or turkey tag for a fee as specified in section 36-416, Idaho Code.

(c) **Game Tags Required.** The appropriate tag must be had for the hunting or taking of each and every one of the aforementioned wildlife. The commission shall promulgate rules to allow exception from tag possession to take wildlife for a disabled hunter companion who is assisting a hunter possessing the appropriate tag and a valid disabled combination license or a disabled archery permit or a disabled hunt motor vehicle permit or who is a disabled veteran participating in a hunt as provided in section 36-408(7), Idaho Code. Provided, however, that the requirements for a wolf tag, a mountain lion tag or a bear tag, as to different periods of time and areas of the state, shall be determined and specified by the commission. Provided further, that the commission may promulgate rules to allow a nonresident deer or elk tag to be used to hunt and kill either a bear, wolf or a mountain lion during the open season for deer or elk in that area, unit or zone as may be specified by the commission. All of said tags are to bear and have serial numbers.

(d) **Game Tag to Be Validated and Attached to Carcass.** As soon as any person kills any wildlife for which a tag is required, said tag, belonging to him, must be validated and attached to said wildlife in a manner provided by commission rule.

(e) **Archery Permits.** In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as an archery



hunt must have in his possession an archery hunt permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(f) Muzzleloader Permit. In addition to meeting the license and tag requirements provided in this chapter, any person participating in any controlled or general game season which has been specifically designated as a muzzleloader hunt must have in his possession a muzzleloader permit which may be purchased for a fee as specified in section 36-416, Idaho Code.

(g) Hound Hunter Permit — Resident — Nonresident. Any person using a dog for the purpose of hunting or for taking, as defined in section 36-202, Idaho Code, big game or furbearing animals must have in his possession a valid hound hunter permit which may be purchased by resident and nonresident license holders for a fee as specified in section 36-416, Idaho Code.

(h) Nonresident Bird of Prey Capture Permit. The commission may, under rules as it may prescribe, issue a nonresident bird of prey capture permit. This capture permit may be purchased by any licensed, nonresident falconer for capturing birds of prey in Idaho. The fee for the permit shall be as specified in section 36-416, Idaho Code, and the permit shall be issued under the condition that the nonresident's home state allows reciprocal raptor capturing privileges for Idaho falconers.

(i) Wildlife Management Area (WMA) Upland Game Bird Permit. The commission may, under rules as it may prescribe, issue a wildlife management area upland game bird permit that must be purchased by all persons over sixteen (16) years of age prior to hunting stocked upland game birds on state wildlife management areas designated by the commission. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(j) Bear Baiting Permit. The commission may, under rules as it may prescribe, issue a bear baiting permit. Any person placing or using bait as may be allowed by rule for the purpose of attracting bear must have in his possession a valid bear baiting permit which may be purchased by a license holder for a fee as specified in section 36-416, Idaho Code.

(k) Migratory Bird Harvest Information Program Permit. The commission may, as provided by federal laws or regulations and under rules as it may prescribe, issue a migratory bird harvest information program permit that must be purchased by all persons prior to hunting migratory game birds as required by federal law or regulations. The fee for the permit shall be as specified in section 36-416, Idaho Code.

(l) Dog Field Trial Permit. The commission may, under rules as it may prescribe, issue a dog field trial permit to any person using birds for dog field trials or training as may be allowed by rule. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(m) Idaho Nursing Home Facility Resident Fishing Permit. The commission may, under rules as it may prescribe, issue an Idaho nursing home facility resident fishing permit that must be purchased by an Idaho nursing home facility to allow residents of its facility to fish during the open season. Facilities eligible to purchase this permit are: intermediate care facilities providing twenty-four (24) hour skilled nursing care, assisted living facilities providing twenty-four (24) hour extensive assistance and skilled nurs-

ing facilities providing twenty-four (24) hour skilled nursing. By purchasing this permit the facility assumes full responsibility for and control over the facility residents while using the permit. All laws, rules and proclamations apply to the use of this permit and it is the responsibility of the facility to assure compliance with all laws, rules and proclamations. In case of a violation the facility shall be held accountable and any citations shall be issued to the facility. The permit may be purchased for a fee as specified in section 36-416, Idaho Code.

(n) Disabled American Veteran Game Tags. Any nonresident disabled American veteran participating in a hunt in association with a qualified organization may be issued a bear, deer, elk or turkey tag for a fee as specified in section 36-416, Idaho Code. "Qualified organization," as used in association with these tags, shall be as defined in section 36-408(7), Idaho Code.

#### History.

I.C., § 36-409, as added by 1976, ch. 95, § 2, p. 315; am. 1978, ch. 171, § 1, p. 391; am. 1980, ch. 339, § 4, p. 872; am. 1981, ch. 98, § 3, p. 142; am. 1982, ch. 230, § 1, p. 606; am. 1984, ch. 197, § 2, p. 484; am. 1986, ch. 7, § 2, p. 46; am. 1986, ch. 52, § 5, p. 149; am. 1987, ch. 253, § 1, p. 515; am. 1988, ch. 209, § 1, p. 391; am. 1990, ch. 6, § 1, p. 11; am. 1990, ch. 372, § 5, p. 1023; am. 1991, ch. 290, § 1, p. 749; am. 1992, ch. 81, § 7, p. 222; am. 1993, ch. 27, § 2, p. 93; am. 1994, ch. 118, § 1, p.

267; am. 1995, ch. 176, § 1, p. 658; am. 1997, ch. 203, § 1, p. 577; am. 1998, ch. 175, § 4, p. 615; am. 1998, ch. 298, § 3, p. 984; am. 1998, ch. 357, § 4, p. 1116; am. 1999, ch. 55, § 1, p. 141; am. 2000, ch. 211, § 12, p. 538; am. 2001, ch. 139, § 1, p. 500; am. 2001, ch. 171, § 1, p. 586; am. 2001, ch. 206, § 1, p. 699; am. 2002, ch. 234, § 5, p. 684; am. 2007, ch. 35, § 1, p. 81; am. 2007, ch. 73, § 2, p. 196; am. 2010, ch. 102, § 1, p. 198; am. 2011, ch. 88, § 3, p. 183; am. 2011, ch. 109, § 3, p. 280; am. 2012, ch. 102, § 1, p. 272.

### STATUTORY NOTES

#### Amendments.

The 2012 amendment, by ch. 102, inserted the second sentence in subsection (c).

**36-415. Discounted license fees.** — Upon finding a biological need or public need or unsold licenses, including tags and permits, the commission is authorized to order a discount in fees for specific species, units, areas, zones, or gender as necessary to encourage increased license sales or to encourage hunting, fishing or trapping. The commission is also authorized to order a discount in fees to encourage the purchase of licenses in consecutive years or to encourage the purchase of multiple tags and permits. Notwithstanding the provisions of other law to the contrary, any discounted fee shall be effective only for the time period set by the commission order, and holders of licenses purchased before the discount shall not be entitled to a refund except as provided by rule.

#### History.

I.C., § 36-415, as added by 1999, ch. 39, § 1, p. 76; am. 2014, ch. 232, § 1, p. 592.

### STATUTORY NOTES

#### Amendments.

The 2014 amendment, by ch. 232, substituted "license" for "tag" in the section heading and rewrote the section, which for-

merly read: "Upon finding a biological need or public need or unsold tags, the commission is authorized to order a discount in tag fees for specific species, units, areas, zones, or gender as necessary to encourage increased tag sales, hunting or use of the resource. Notwithstanding the provisions of other law to the contrary, the discounted tag fee shall be effective only

for the time period set by the commission order, and holders of tags purchased before the discount shall not be entitled to a refund except as provided by rule."

#### Effective Dates.

Section 2 of S.L. 2014, ch. 232 declared an emergency. Approved March 26, 2014.

**36-416. Schedule of license fees.** — As used in this section, "N/A" means "not available."

#### (a) Sport Licenses

License	Resident	Non-Resident
Combination License	\$ 31.75	\$ 238.25
Hunting License	11.00	N/A
Hunting License with 3 Day Fishing License	N/A	153.00
Fishing License	24.00	96.50
Sr. Combination License (65 and Older)	10.00	N/A
Sportsman's Pak License	114.65	N/A
Jr. Combination License	15.75	N/A
Jr. Hunting License	5.50	N/A
Jr. Mentored Hunting License or Disabled American Veteran Hunting License with a 3 Day Fishing License	N/A	30.00
Jr. Fishing License	12.00	20.00
Disabled Combination License	3.25	N/A
Disabled Fishing License	3.25	N/A
Military Furlough Combination License	15.75	N/A
Military Furlough Fishing License	15.75	N/A
Small Game Hunting License	N/A	96.00
3 Day Small Game Hunting License	N/A	33.75
Daily Fishing (1st-day) License	9.75	11.00
Consecutive Day Fishing License	5.00	6.00
3 Day Fishing with Salmon/Steelhead Permit	N/A	35.75
Nongame Hunting License	N/A	33.75

#### (b) Sport Tags

Deer Tag	\$ 18.00	\$ 300.00
Controlled Hunt Deer Tag	18.00	300.00
Jr. or Sr. or Disabled American Veteran Deer Tag	9.00	N/A
Jr. Mentored or Disabled American Veteran Deer Tag	N/A	22.00
Elk A Tag	29.00	415.00
Elk B Tag	29.00	415.00
Controlled Hunt Elk Tag	29.00	415.00
Jr. or Sr. or Disabled American Veteran Elk Tag	14.75	N/A
Jr. Mentored or Disabled American Veteran Elk Tag	N/A	38.00
Bear Tag	9.75	184.25



Jr. or Sr. or Disabled American Veteran		
Bear Tag	5.00	N/A
Jr. Mentored or Disabled American Veteran		
Bear Tag	N/A	22.00
Turkey Tag	18.00	78.25
Jr. or Sr. or Disabled American Veteran		
Turkey Tag	9.00	N/A
Jr. Mentored or Disabled American Veteran		
Turkey Tag	N/A	18.00
Mountain Lion Tag	9.75	184.25
Gray Wolf Tag	9.75	184.25
Antelope Tag	29.50	310.00
Moose Tag	165.00	2,100.00
Sheep Tag	165.00	2,100.00
Goat Tag	165.00	2,100.00
Sandhill Crane Tag	18.00	65.75

For purposes of this subsection, disabled American veteran tags provided to nonresidents shall be limited to holders of a nonresident disabled American veterans hunting license.

(c) Sport Permits

Bear Baiting Permit	\$ 11.00	\$ 30.00
Hound Hunter Permit	11.00	168.00
WMA Upland Game Bird Permit	22.00	50.00
Archery Permit	16.50	18.25
Muzzleloader Permit	16.50	18.25
Salmon Permit	11.00	24.00
Steelhead Permit	11.00	24.00
Federal Migratory Bird Harvest Info. Permit	0.00	3.00
Disabled Archery Permit	0.00	0.00
2-Pole Fishing Permit	12.00	13.75
Turkey Controlled Hunt Permit	6.00	6.00
Sage/Sharptail Grouse Permit	3.00	3.00
Disabled Hunt Motor Vehicle Permit	0.00	0.00

(d) Commercial Licenses and Permits

Raptor Captive Breeding Permit	\$ 65.75	\$ 78.75
Falconry Permit	27.25	N/A
Falconry Capture Permit	N/A	168.00
Jr. Trapping License	5.50	N/A
Trapping License	25.00	300.00
Taxidermist-Fur Buyer License		
5 year license	175.00	N/A
1 year license	38.25	168.25
Shooting Preserve Permit	329.75	N/A
Commercial Wildlife Farm License	137.50	N/A
Commercial Fishing License	110.00	265.00
Wholesale Steelhead License	165.00	198.25
Retail Steelhead Trout Buyer's License	33.00	39.25

(e) Commercial Tags



Bobcat Tag	\$ 3.00	\$ 3.00
Otter Tag	3.00	3.00
Net Tag	55.00	65.75
Crayfish/Minnow Tag	1.25	3.00
(f) Miscellaneous-Other Licenses		
Duplicate License	\$ 5.50	\$ 6.50
Shooting Preserve License	11.00	22.00
Captive Wolf License	22.00	N/A
(g) Miscellaneous-Other Tags		
Duplicate Tag	\$ 5.50	\$ 6.50
Wild Bird Shooting Preserve Tag	5.50	6.50
(h) Miscellaneous-Other Permits-Points-Fees		
Falconry In-State Transfer Permit	\$ 5.50	\$ N/A
Falconry Meet Permit	N/A	26.25
Rehab Permit	3.00	3.00
Educational Fishing Permit	0.00	0.00
Live Fish Importation Permit	3.00	3.00
Sport Dog and Falconry Training Permit	3.00	3.00
Wildlife Transport Permit	3.00	3.00
Scientific Collection Permit	50.00	50.00
Private Park Permit	21.75	26.25
Wildlife Import Permit	21.75	26.25
Wildlife Export Permit	11.00	13.25
Wildlife Release Permit	11.00	13.25
Captive Wildlife Permit	21.75	26.25
Fishing Tournament Permit	21.75	25.00
Dog Field Trial Permit	33.00	40.00
Live Fish Transport Permit	21.75	26.25
Controlled Hunt Application Fee	4.50	13.00
Fee for Application for the Purchase of Controlled Hunt Bonus or Preference Points	4.50	4.50
Nursing Home Fishing Permit	33.00	N/A

### History.

I.C., § 36-416, as added by 2000, ch. 211, § 15, p. 538; am. 2001, ch. 125, § 1, p. 444; am. 2001, ch. 206, § 2, p. 699; am. 2002, ch. 234, § 8, p. 684; am. 2004, ch. 236, § 1, p. 698; am. 2005, ch. 379, § 3, p. 1234; am. 2007,

ch. 35, § 2, p. 81; am. 2007, ch. 73, § 3, p. 196; am. 2009, ch. 201, § 2, p. 643; am. 2010, ch. 94, § 1, p. 179; am. 2011, ch. 88, § 4, p. 183; am. 2012, ch. 100, § 2, p. 264; am. 2012, ch. 201, § 2, p. 536; am. 2013, ch. 70, § 4, p. 169; am. 2014, ch. 267, § 2, p. 665.

### STATUTORY NOTES

#### Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 100, in subsection (a), substituted "N/A" for "153.00" for non-resident hunting license and inserted "Hunting License with 3 Day Fishing License" and its fee schedule.

The 2012 amendment, by ch. 201, substituted "114.65" for "108.50" for the resident Sportsman's Pak License in subsection (a).

The 2013 amendment, by ch. 70, in subsection (a), deleted "Youth Small Game License" and "Youth Hunter Education Graduate Hunting License" and their fees, changed the non-resident Disabled Combination License fee from "3.25" to "N/A", inserted "Disabled

Hunting License” and its fees, and substituted “disabled hunting licenses” for “disabled combination licenses” in the last sentence.

The 2014 amendment, by ch. 267, added the first sentence in the section; in subsection (a), inserted “or Disabled American Veteran Hunting License with Day Fishing License” following “Jr. Mentored Hunting License” in the first column; deleted the “Disabled Hunting License” row following “Disabled Fishing License”; deleted the last paragraph, requir-

ing non-resident disabled veterans to hunt with a “qualified organization”; in subsection (b), inserted “or Disabled American Veteran” following “Jr. Mentor” four times in the first column, substituted “N/oA” for “9.00” twice, “14.75”, and “5.00” in the third column, and rewrote the last paragraph.

#### **Effective Dates.**

Section 3 of S.L. 2014, ch. 267 declared an emergency. Approved March 26, 2014.

## **CHAPTER 6**

### **COMMERCIAL TRAFFIC IN SKINS, HIDES, AND PELTS OF WILDLIFE**

#### **SECTION.**

**36-606.** Confiscation of wildlife — Proof of ownership required.

#### **36-606. Confiscation of wildlife — Proof of ownership required.**

— (1) The director is hereby authorized to seize and confiscate any wildlife or the skins, hides, pelts, horns or antlers or other portions thereof in the possession of any fur buyer or taxidermist, licensed or unlicensed, unless the person having same is able to produce satisfactory record of lawful origin and proof of ownership.

(2) Compliance with record requirements as provided in section 36-603, Idaho Code, shall constitute satisfactory record of lawful origin and proof of ownership requirements as provided in subsection (1) of this section.

#### **History.**

I.C., § 36-606, as added by 1976, ch. 95,  
§ 2, p. 315; am. 2011, ch. 252, § 2, p. 695.

#### **STATUTORY NOTES**

#### **Compiler's Notes.**

This section is set out to correct an error in subsection (1) in the bound volume.

## **CHAPTER 14**

### **GENERAL PENAL PROVISIONS**

#### **SECTION.**

**36-1401.** Violations.

**36-1401. Violations.** — (a) Infractions. Any person who pleads guilty to or is found guilty of a violation of the following provisions of the fish and game code or the following rules or proclamations promulgated pursuant thereto is guilty of an infraction:

1. Statutes.

- (A) Take, transport, use or have in possession bait fish as set forth in section 36-902(d), Idaho Code.
- (B) Chumming as set forth in section 36-902(e), Idaho Code.
- (C) Nonresident child under the age of fourteen (14) years fishing without a valid license and not accompanied by a valid license holder as set forth in section 36-401(a)2., Idaho Code.
- (D) Use or cut a hole larger than ten (10) inches in the ice for ice fishing as set forth in section 36-1509(a), Idaho Code.
- (E) Store fish without required tags/permits/statements as set forth in section 36-503, Idaho Code.
- (F) Own, possess or harbor any dog found running loose and which is tracking, pursuing, harassing or attacking a big game animal as set forth in section 36-1101(b)7.(B), Idaho Code.
- (G) Hunt migratory waterfowl without having in possession a signed federal migratory bird hunting stamp as set forth in section 36-1102(b)2., Idaho Code.
- (H) Hunt migratory game birds without having in possession a license validated for the federal migratory bird harvest information program permit as set forth in section 36-409(k), Idaho Code.
- (I) Trap in or on, destroy or damage any muskrat house as provided in section 36-1103(c), Idaho Code.
- (J) Hunt migratory game birds with a shotgun capable of holding more than three (3) shells as provided and incorporated in section 36-1102(b), Idaho Code.

## 2. Rules or Proclamations.

- (A) Fish from a raft or boat with motor attached in waters where motors are prohibited.
- (B) Fish with hooks larger than allowed in that water.
- (C) Fish with barbed hooks in waters where prohibited.
- (D) Exceed any established bag limit for fish by one (1) fish, except bag limits for anadromous fish, landlocked chinook salmon, kamloops rainbow trout, lake trout, or bull trout.
- (E) Fish with more than the approved number of lines or hooks.
- (F) Fail to leave head and/or tail on fish while fish are in possession or being transported.
- (G) Snag or hook fish other than in the head and fail to release, excluding anadromous fish.
- (H) Fail to attend fishing line and keep it under surveillance at all times.
- (I) Fail to comply with mandatory check and report requirements.
- (J) Fail to leave evidence of sex or species attached as required on game birds.
- (K) Hunt or take migratory game birds or upland game birds with shot exceeding the allowable size.
- (L) Fail to release, report or turn in nontarget trapped animals.
- (M) Fail to complete required report on trapped furbearer.
- (N) Fail to present required furbearer animal parts for inspection.
- (O) Fail to attach identification tags to traps.



(P) Possess not more than one (1) undersized bass.

(Q) Park or camp in a restricted area, except length of stay violations.

(R) Fail to leave evidence of sex attached as required on game animals.

(b) Misdemeanors. Any person who pleads guilty to, is found guilty or is convicted of a violation of the provisions of this title or rules or proclamations promulgated pursuant thereto, or orders of the commission, except where an offense is expressly declared to be an infraction or felony, shall be guilty of a misdemeanor.

(c) Felonies. Any person who pleads guilty to, is found guilty or is convicted of a violation of the following offenses shall be guilty of a felony:

1. Knowingly and intentionally selling or offering for sale or exchange, or purchasing or offering to purchase or exchange, any wildlife, or parts thereof, which has been unlawfully killed, taken or possessed.
2. Releasing into the wild, without a permit from the director, any of the following wildlife, whether native or exotic: ungulates, bears, wolves, large felines, swine, or peccaries.
3. Unlawfully killing, possessing or wasting of any combination of numbers or species of wildlife within a twelve (12) month period which has a single or combined reimbursable damage assessment of more than one thousand dollars (\$1,000), as provided in section 36-1404, Idaho Code.
4. Conviction within ten (10) years of three (3) or more violations of the provisions of this title, penalties for which include either or both a mandatory license revocation or a reimbursable damage assessment.

#### History.

I.C., § 36-1401, as added by 1976, ch. 95, § 2, p. 315; am. 1991, ch. 44, § 2, p. 83; am. 1991, ch. 130, § 1, p. 285; am. 1992, ch. 172, § 1, p. 536; am. 1994, ch. 94, § 2, p. 213; am.

1997, ch. 270, § 1, p. 781; am. 1997, ch. 347, § 1, p. 1032; am. 1998, ch. 58, § 1, p. 214; am. 1998, ch. 170, § 12, p. 567; am. 1999, ch. 32, § 3, p. 63; am. 2000, ch. 211, § 31, p. 538; am. 2012, ch. 107, § 2, p. 284.

#### STATUTORY NOTES

#### Amendments.

The 2012 amendment, by ch. 107, substi-

tuted "36-1101(b)7.(B)" for "36-1101(b)6.(B)" in paragraph 1.(F).

## CHAPTER 15

### PUBLIC SAFETY

#### SECTION.

36-1508. Shooting from public highway —

Children in possession of firearms.

**36-1508. Shooting from public highway — Children in possession of firearms. —** No person shall:

(a) Shoot from Public Highway. Discharge any firearm from or across a public highway.

(b) Children with Firearms. No person under the age of ten (10) years shall have in his possession any shotgun, rifle or other firearm while in the fields or forests or in any tent, camp, auto or any other vehicle in the state of Idaho, except that the holder of a valid hunting license or a participant in a mentored hunting program as prescribed by rules of the commission, if

accompanied by an adult licensed to hunt in the state of Idaho, may possess a firearm for hunting while in the fields or forests.

**History.**

I.C., § 36-1508, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1992, ch. 81, § 34, p. 222; am.

2002, ch. 234, § 9, p. 684; am. 2012, ch. 104,  
§ 1, p. 280.

**STATUTORY NOTES**

**Amendments.**

The 2012 amendment, by ch. 104, in sub-  
section (b). substituted “age of ten (10) years”  
for “age of twelve (12) years” near the begin-  
ning and substituted “holder of a valid hunt-

ing license or a participant in a mentored  
hunting program as prescribed by rules of the  
commission” for “holder of a youth small game  
license or youth hunter education graduate  
license” near the end.

**CHAPTER 16**

**RECREATIONAL TRESPASS — LANDHOLDER  
LIABILITY LIMITED**

**SECTION.**

36-1603. Trespassing on cultivated lands or

in violation of warning signs  
— Posting of public lands.

**36-1603. Trespassing on cultivated lands or in violation of warn-  
ing signs — Posting of public lands.** — (a) No person shall enter the real  
property of another and shoot any weapon or enter such property for the  
purposes of hunting, retrieving wildlife, fishing or trapping, without the  
permission of the owner or person in charge of the property, which property  
is either cultivated or:

- (1) Is posted with “No Trespassing” signs;
- (2) Is posted with a minimum of one hundred (100) square inches of  
fluorescent orange, bright orange, blaze orange, safety orange or any  
similar high visibility shade of orange colored paint except that when  
metal fence posts are used, a minimum of eighteen (18) inches of the top  
of the post must be painted a high visibility shade of orange;
- (3) Is posted with other notices of like meaning, spaced at intervals of not  
less than one (1) sign, paint area or notice per six hundred sixty (660) feet  
along such real property; provided that where the geographical configu-  
ration of the real property is such that entry can reasonably be made only  
at certain points of access, such property is posted sufficiently for all  
purposes of this section if said signs, paint or notices are posted at such  
points of access; or
- (4) Is posted with a conspicuous sign where a public road enters the real  
property, through which or along which road the public has a right-of-way,  
stating words substantially similar to “PRIVATE PROPERTY, NO TRES-  
PASSING OFF (fill in relevant compass direction(s)) SIDE OF ROAD  
NEXT (fill in the distance) MILES,” and which is posted with a conspic-  
uous sign where the public road exits the real property stating words  
substantially similar to “LEAVING PRIVATE PROPERTY.” The postings  
shall be placed on the private real property. In lieu of posting the compass

direction(s), a map depicting the area of private property may be displayed on the sign;

For the purposes of this section, “cultivated” shall mean soil that is being or has been prepared by loosening or breaking up for the raising of crops, or used for the raising of crops, or artificially irrigated pasturage. No person shall fail to depart immediately from the real property of another after being notified in writing or orally by the owner of the real property or the owner’s authorized agent.

(b) No person shall post, sign, or indicate that any public lands within this state, not held under an exclusive control lease, are privately owned lands.

#### **History.**

I.C., § 36-1603, as added by 1976, ch. 95, § 2, p. 315; am. 1987, ch. 116, § 2, p. 229; am. 1992, ch. 283, § 2, p. 874; am. 1998, ch. 251,

§ 2, p. 818; am. 2005, ch. 112, § 1, p. 363; am. 2013, ch. 150, § 2, p. 347; am. 2014, ch. 28, § 3, p. 39.

### **STATUTORY NOTES**

#### **Amendments.**

The 2013 amendment, by ch. 150, in subsection (a), inserted “bright orange, blaze orange, safety orange or any similar high visibility shade of orange colored” and substituted “a minimum of eighteen (18) inches of the top of the post must be painted a high visibility shade of orange” for “the entire post must be painted fluorescent orange” near the middle of the first sentence.

The 2014 amendment, by ch. 28, rewrote subsection (a) to the extent that a detailed comparison is impracticable.

#### **Compiler’s Notes.**

The letter “s” and the words enclosed in parentheses so appeared in the law as enacted.

## **36-1604. Limitation of liability of landowner.**

### **JUDICIAL DECISIONS**

#### **ANALYSIS**

Gratuitous permission.

Owner.

#### **Gratuitous Permission.**

The snowmobile registration fee required under Idaho law (§ 67-7103) is not a “charge” for purposes of this section. *Albertson v. Fremont County*, 834 F. Supp. 2d 1117 (D. Idaho 2011).

#### **Owner.**

To be an owner within the meaning of this section, a person or entity must have the authority to exclude the public from the premises. *Albertson v. Fremont County*, 834 F. Supp. 2d 1117 (D. Idaho 2011).

United States was an owner within the

meaning of this section, where a snowmobile operator was injured on a snowmobile trail that was on national forest land. *Albertson v. Fremont County*, 834 F. Supp. 2d 1117 (D. Idaho 2011).

County was not a owner for purposes of this section, where its cost-share agreement with the federal government, as to its interest in maintaining groomed snowmobile trail systems on the national forest, did not entitle the county to grant admittance or deny access to use of the snowmobile trails. *Albertson v. Fremont County*, 834 F. Supp. 2d 1117 (D. Idaho 2011).



## CHAPTER 21

### OUTFITTERS AND GUIDES

**SECTION.**

36-2101. Declaration of policy.

36-2102. Definitions.

**SECTION.**

36-2103. Exceptions.

**36-2101. Declaration of policy.** — The natural resources of the state of Idaho are an invaluable asset to every community in which they abound. Every year, in rapidly increasing numbers, the inhabitants of the state of Idaho and nonresidents are enjoying the benefits of Idaho's recreational opportunities. The tourist trade is of vital importance to the state of Idaho, and the recreational value of Idaho's natural resources is such that the number of persons who are each year participating in their enjoyment is steadily increasing. The intent of this legislation is to promote and encourage residents and nonresidents alike to participate in the enjoyment and use of the deserts, mountains, rivers, streams, lakes, reservoirs and other natural resources of Idaho, and the fish and game therein, and to that end to regulate and license those persons who undertake for compensation to provide equipment and personal services to such persons, for the explicit purpose of safeguarding the health, safety, welfare and freedom from injury or danger of such persons, in the exercise of the police power of this state. It is not the intent of this legislation to interfere in any way with the business of livestock operations, private property rights, nor to prevent the owner of pack animals from using same to accommodate friends where no consideration is involved for the use thereof, nor is it the intent of this legislation to interfere in any way with the right of the general public to enjoy the recreational value of Idaho's deserts, mountains, rivers, streams, lakes, reservoirs and other natural resources when the services of commercial outfitters and guides are not utilized, nor to interfere with the right of the United States to manage the public lands under its control.

**History.**

I.C., § 36-2101, as added by 1976, ch. 95,

§ 2, p. 315; am. 1988, ch. 269, § 1, p. 886; am. 2014, ch. 256, § 1, p. 646.

**STATUTORY NOTES****Amendments.**

The 2014 amendment, by ch. 256, inserted

“private property rights” near the beginning of the last sentence.

**36-2102. Definitions.** — (a) “Person” includes any individual, firm, partnership, corporation or other organization or any combination thereof.

(b) “Outfitter” includes any person who, while engaging in the acts enumerated herein: (1) advertises or otherwise holds himself out to the public for hire; (2) provides facilities and services for consideration; and (3) maintains, leases, or otherwise uses equipment or accommodations for compensation for the conduct of outdoor recreational activities limited to the following: hunting animals or birds; float or power boating on Idaho rivers and streams; fishing on Idaho lakes, reservoirs, rivers and streams; and

hazardous desert or mountain excursions. Any firm, partnership, corporation or other organization or combination thereof operating as an outfitter shall designate one (1) or more individuals as agents who shall, together with the licensed outfitter, be held responsible for the conduct of the licensed outfitter's operations and who shall meet all of the qualifications of a licensed outfitter.

(c) "Guide" is any natural person who is employed by a licensed outfitter to furnish personal services for the conduct of outdoor recreational activities directly related to the conduct of activities for which the employing outfitter is licensed. Any such person not employed by a licensed outfitter who offers or provides facilities or services as specified in subsection (b) of this section shall be deemed in violation of the provisions of this chapter, except: (1) any employee of the state of Idaho or the United States when acting in his official capacity, or (2) any natural person who is employed by a licensed outfitter solely for the following activities: caring for, grooming or saddling of livestock, cooking, woodcutting, and transporting people, equipment and personal property on public roads shall be exempt from the provisions of this chapter.

(d) "Board" means the Idaho outfitters and guides licensing board.

(e) "Resident" means a person who has resided in the state of Idaho for a period of six (6) months next preceding the time of application for license.

(f) "Nonresident" means any person not included in subsection (e) of this section.

(g) "License year" means that period of time beginning on the date an outfitter's or guide's license is issued and ending on the anniversary of the date of issuance in the following year.

(h) "Individual" means any person other than a partnership, corporation or any other organization or combination thereof.

#### History.

I.C., § 36-2102, as added by 1976, ch. 95, § 2, p. 315; am. 1977, ch. 162, § 1, p. 418; am.

1988, ch. 269, § 2, p. 886; am. 1990, ch. 254, § 1, p. 726; am. 2001, ch. 271, § 1, p. 988; am. 2014, ch. 256, § 2, p. 646.

### STATUTORY NOTES

#### Amendments.

The 2014 amendment, by ch. 256, substituted "in the acts enumerated herein" for "in

any of the acts enumerated herein in any manner" in the introductory language of subsection (b).

**36-2103. Exceptions.** — (1) The foregoing definitions of the terms "outfitter" and "guide" do not include:

(a) Private landowners and their employees who provide facilities or services, whether for compensation or not, upon their own privately owned property. Nothing in this exception shall prohibit landowners or their employees from voluntary licensure;

(b) A person who furnishes, rents or leases, whether or not for compensation or gain or promise thereof, a pack or saddle horse, or other equipment, to a hunter or a fisherman. A person so furnishing, renting or leasing a pack or saddle horse or other equipment shall not be considered an "outfitter" or "guide" if, on an incidental basis, they accompany a

hunter, not to include extended camping, for the purpose of maintaining the safety and well-being of the livestock used to retrieve harvested big game; or

(c) Members of a nonprofit organization if the organization meets the following criteria: (i) it is exempt from the payment of federal income taxes under section 501(c)(3) of the Internal Revenue Code; (ii) its purpose is to provide outdoor experiences to young persons under twenty-one (21) years of age and to its leaders; and (iii) it provides outfitting and guiding services to its own bona fide members on a not-for-profit basis. If the members of the nonprofit organization provide outfitting or guiding services to persons who are not its members and leaders, the provisions of this chapter shall apply to that organization, its members and leaders.

(2) A person who obtains permission to outfit or guide on private property from the property owner is required to be licensed as an outfitter or guide unless the terms of a written agreement with the property owner do not require licensure.

History.

I.C., § 36-2103, as added by 1976, ch. 95,  
§ 2, p. 315; am. 1991, ch. 157, § 1, p. 373; am.

2001, ch. 271, § 2, p. 988; am. 2014, ch. 256,  
§ 3, p. 646.

STATUTORY NOTES

Amendments.

The 2014 amendment, by ch. 256, designated the extant provisions of the section as subsection (1); in subsection (1), substituted “do not include” for “will not apply” in the

introductory language, added paragraph (a), and deleted “Additionally, the foregoing definition of ‘outfitter’ and ‘guide’ shall not apply to” at the beginning of paragraph (c); and added subsection (2).

CHAPTER 24

SPECIES CONSERVATION

36-2401. Definitions.

RESEARCH REFERENCES

Idaho Law Review. — One Bird Causing a Big Conflict: Can Conservation Agreements

Keep Sage Grouse off the Endangered Species List?, Comment. 49 Idaho L. Rev. 621 (2013).





# TITLE 37

## FOOD, DRUGS, AND OIL

### CHAPTER.

3. DAIRIES AND DAIRY PRODUCTS, §§ 37-301 — 37-319, 37-322, 37-324 — 37-326, 37-330, 37-332 — 37-332h, 37-333, 37-334, 37-334a, 37-334d, 37-334e, 37-335, 37-338 — 37-343.
6. DAIRY ENVIRONMENTAL CONTROL ACT, §§ 37-601 — 37-609.
7. PASTEURIZATION OF MARKET MILK AND MARKET MILK PRODUCTS. [REPEALED.]
8. GRADES OF QUALITY FOR MILK AND MILK PRODUCTS. [REPEALED.]

### CHAPTER.

10. DISCRIMINATION AND UNFAIR COMPETITION IN BUYING AND SELLING DAIRY PRODUCTS. [REPEALED.]
27. UNIFORM CONTROLLED SUBSTANCES, §§ 37-2701, 37-2705, 37-2709, 37-2111, 37-2713, 37-2716, 37-2726, 37-2730A, 37-2744.
32. LEGEND DRUG CODE IMPRINT, § 37-3201.
33. RETAIL SALES OF PSEUDOEPHEDRINE PRODUCTS, §§ 37-3303, 37-3303A.

## CHAPTER 3

### DAIRIES AND DAIRY PRODUCTS

#### SECTION.

- 37-301. Statement of purpose.
- 37-302. Inspections.
- 37-303. Standards and rules.
- 37-304. Permit issuance and revocation.
- 37-305. Enforcement.
- 37-306. Department to cooperate with other agencies.
- 37-307. Milk haulers and tanks — Definitions.
- 37-308. Standards for transportation tanks.
- 37-309. Standards for milk haulers.
- 37-310. Standards for quality control of milk samples.
- 37-311. Reports of volumes purchased.
- 37-312. Butter and whey butter — Definitions and qualities.
- 37-313. Butter grades.
- 37-314. Improperly graded butter.
- 37-315. Advertising substitutes for dairy products.
- 37-316. Food products made to resemble dairy products — Definitions.
- 37-317. Quality standards for food products made to resemble dairy products.
- 37-318. License requirements for manufacturers of food products made to resemble dairy products.
- 37-319. Penalty — Enforcement.
- 37-322. Standard for cream. [Repealed.]
- 37-324. Penalty for violations. [Repealed.]
- 37-325. [Amended and Redesignated.]
- 37-326. Standards for dairy products. [Repealed.]
- 37-330. Penalty for violating sections 37-325 through 37-329. [Repealed.]
- 37-332. [Amended and Redesignated.]

#### SECTION.

- 37-332a. [Amended and Redesignated.]
- 37-332b. [Amended and Redesignated.]
- 37-332c. Butter graders — Employment — Notice to department — Chief grader — Responsibility of graders — Change of graders — Notice to department — Responsibility of manufacturer for wrapper — Revocation of privilege of using grade emblem. [Repealed.]
- 37-332d. Licensing of butter graders — Examination — Duration — Fees. [Repealed.]
- 37-332e. Revocation or suspension of license. [Repealed.]
- 37-332f. Enforcement of act by department — Rules and regulations. [Repealed.]
- 37-332g. Violations of statute — Misdemeanor — Punishment. [Repealed.]
- 37-332h. License fees, disposition, use. [Repealed.]
- 37-333. Weight of butter. [Repealed.]
- 37-334. [Amended and Redesignated.]
- 37-334a. [Amended and Redesignated.]
- 37-334d. [Amended and Redesignated.]
- 37-334e. [Amended and Redesignated.]
- 37-335. [Amended and Redesignated.]
- 37-338. Department of agriculture to administer act. [Repealed.]
- 37-339. Breed name of dairy cattle carried on label of milk and milk products — Policy. [Repealed.]
- 37-340. Use of breed name on label unlawful unless derived exclusively

SECTION.	SECTION.
from registered dairy herds — Permit. [Repealed.]	343 a misdemeanor. [Repealed.]
37-341. Administration and enforcement of act. [Repealed.]	37-343. Injunction proceedings additional remedy for violations. [Repealed.]
37-342. Violations of §§ 37-339 through 37-	

**37-301. Statement of purpose.** — It is hereby declared to be the policy of the legislature of the state of Idaho that the public interest requires that all dairy products produced, distributed, offered for sale or sold in Idaho meet minimum standards of sanitary condition, quality, identity, classification and grade. To accomplish this purpose, the director of the department of agriculture shall inspect dairy products, dairy farms, production facilities and processing facilities, issue permits and enforce minimum standards in accordance with the provisions of this chapter.

**History.** 1911, ch. 190, § 1, p. 627; reen. C.L. 65:38; C.S., § 1705; I.C.A., § 36-401; am. 1967, ch. 54, § 1, p. 104; am. 2014, ch. 275, § 1, p. 685.

STATUTORY NOTES

**Amendments.** The 2014 amendment, by ch. 275, rewrote the section heading and the section text, which formerly read: “All wholesale dairymen and other persons having stationary places of business, keeping and offering for sale milk, shall at all times keep the name or names of the dairyman or dairymen, from whom the milk on sale shall have been obtained.”

**37-302. Inspections.** — (1) It shall be the duty of the director of the department of agriculture to cause to be visited as frequently as it may deem necessary all dairies supplying dealers and consumers with milk, and inspect the same to ascertain and certify sanitary conditions and milk quality. A copy of the inspection report shall be left with the owner and such information given as will assist the producer to improve the sanitary conditions or remedy such defects as the inspection report indicates. A copy of the inspection report shall be kept on file in the office of the director.

(2) The director of the department of agriculture is hereby authorized and directed to designate any agent to inspect, examine and test any or all dairy products in accordance with rules as the department may prescribe; and to ascertain and certify the grade, classification, quality or sanitary condition thereof and other pertinent facts as the department may require. The director or agent of the department of agriculture of the state of Idaho shall make sanitary inspection of milk, cream, butter and dairy products of any kind whatsoever, intended for human consumption, and of containers, utensils, equipment, buildings, premises or anything whatsoever employed in the production, handling, storing, processing or manufacturing of dairy products or that would affect the purity of the products. Inspections, examinations and tests shall be made to meet the requirements of the laws of the state and of the United States for the sale of the products or their transportation in both intrastate and interstate commerce. Any agent designated by the director to make inspections shall have the right for that purpose to enter any premises and buildings where milk, cream, butter or dairy products shall be produced, stored, processed or manufactured.



(3) Whenever an inspection of any dairy product is made by the department of agriculture, or whenever permanent or temporary inspectors or employees are used by the department for the purpose of enforcing or promulgating an inspection or sanitary program for any dairy product, the department is authorized to fix, assess and collect or cause to be collected from the dairy processors, fees or assessments for services when they are performed by employees or agents of the department, the fees to be on a uniform basis in an amount reasonably necessary to cover the cost of such inspection and the administration of the department of agriculture dairy inspection program; provided however, that the department shall so adjust the fees to be collected under this section as to meet the expenses necessary for this inspection service only, all of the fees to be used for this purpose alone; and provided further, that in no event shall the fees or assessments exceed four (4) mills per pound of butterfat produced by any dairyman in Idaho or received by processors. All such fees and moneys collected or received by the department, its employees or agents under this act shall be deposited in the dairy industry and inspection fund, which fund is hereby created. All moneys coming into the fund are hereby appropriated to the department of agriculture to be used in the inspection required by law to be made of the dairy industry and dairy products. The fees and assessments accrued in any given month are due and payable no later than the twentieth day of the following month.

**History.**

I.C., § 37-302, as reen. 1967, ch. 54, § 2, p. 104; am. 1974, ch. 23, § 24, p. 633; am. 1992,

ch. 93, § 1, p. 295; am. 2014, ch. 275, § 2, p. 685.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 275, substituted "Inspections" for "Dairies to be inspected" in the section heading; added the subsection (1) designation to the existing pro-

visions; inserted "to ascertain and certify sanitary conditions and milk quality" at the end of the first sentence in subsection (1); and added subsections (2) and (3).

**37-303. Standards and rules.** — (1) The director of the department of agriculture is hereby authorized to promulgate and enforce reasonable rules as may be necessary or desirable to establish standards and to carry out its functions and the intent and purposes of this chapter.

(2) All milk or cream utilized in the manufacture of dairy products and all manufactured dairy products produced, distributed, offered for sale, or sold in Idaho shall meet the requirements established by this chapter, of federal law, and rules or regulations promulgated or adopted pursuant to state or federal law.

(3) The following standards concerning the sanitation of milk and cream are hereby established:

(a) The term "processor" means any individual, partnership, association or corporation doing business in the state of Idaho that produces, purchases, obtains or uses in the state of Idaho any milk or cream for use in the manufacture of butter, cheese, evaporated milk, frozen desserts, frozen novelties, edible dry milk or other dairy products. The term

“processor” shall not include any individual, partnership, association or corporation that produces, purchases, obtains or uses milk or cream for his or its own consumption. The term “producer” means any person, firm or corporation who owns or controls one (1) or more cows, goats, sheep or water buffalo, a part or all of the milk from which is sold or offered for sale to a processor.

(b) No processor shall purchase or obtain in any manner, or use in any manner, for the sale or manufacture of any dairy products as provided in paragraph (a) of this subsection, any unacceptable milk or cream as herein defined.

(c) The processor shall, for the purpose of determining the acceptability or unacceptability of milk or cream, cause all milk or cream to be tested and graded according to the standards herein defined before purchase, acquisition or use in any manner. Provided however, that where the processor customarily purchases the milk or cream of any person regularly engaged in the production thereof, the processor is required to test milk and cream of such producer not less than once each month by the approved bacteria tests and approved mastitic tests, or other tests as may be prescribed by the director of the department of agriculture. When milk or cream from any producer is found unacceptable as a result of required testing, the processor shall thereafter test the milk or cream of the producer daily by the same test until it is found to be acceptable. Each processor shall retain for at least one (1) year at the place where milk or cream is received, a record of such tests in the form and of the content that shall be prescribed by the department of agriculture and shall exhibit the record at the place where the same is kept whenever requested to do so by the producer or the department and shall permit copies thereof to be taken.

(d) Milk and dairy product quality standards and standards of identity will be established by rules promulgated by the department.

(e) Any milk, cream or dairy product that is unclean, unwholesome or unfit for human consumption, as determined by the department, shall be rejected as unacceptable.

#### History.

I.C., § 37-303, as added by 2014, ch. 275,  
§ 3, p. 685.

#### STATUTORY NOTES

##### Prior Laws.

Former § 37-303, Excluding poor milk from sale, which comprised S.L. 1911, ch. 190, § 3, p. 627; reen. C.L. 65:40; C.S., § 1707; I.C.A., § 36-403; am. 1955, ch. 176, § 1, p. 357, was repealed by S.L. 1967, ch. 54, § 5.

**37-304. Permit issuance and revocation.** — (1) The director or the director’s authorized agent shall issue a permit authorizing the sale of milk for human consumption to all dairy farms that meet the standards and requirements of this chapter, and rules promulgated pursuant to this chapter.

(2) The director or his agent may issue a permit to sell milk for human



consumption to a new or expanding dairy farm only upon presentation to the director by the new or expanding dairy farm of the following:

- (a) A certified letter, supplied by the board of county commissioners, certifying the new or expanding dairy farm's compliance with applicable county livestock ordinances; and
- (b) Evidence that a valid water right exists to supply adequate water for the new or expanding dairy farm; or
- (c) A copy of an application for a permit to appropriate water that has been filed with the Idaho department of water resources and which, if approved, will supply adequate water for the dairy farm; or
- (d) A copy of an application to change the point of diversion, place, period and nature of use of an existing water right that has been filed with the Idaho department of water resources and which, if approved, will supply adequate water for the dairy farm.

(3) As used in this section:

- (a) "Animal units" shall be as defined in rule by the director.
- (b) "Expanding dairy farm" means an existing, legally permitted dairy farm that increases, or applies to increase, its existing animal units beyond the number for which it is permitted under applicable county livestock ordinances or increases, or applies to increase, the waste containment system.
- (c) "New dairy farm" means a dairy farm constructed after the effective date of this act.

(4) Whenever, under any law of this state or rule, the director of the department of agriculture or his agent is required to inspect dairy farms for compliance with rules prescribed by the department, or determine the sanitary condition of anything referred to in section 37-303, Idaho Code, or the purity of milk, cream, butter or other dairy products intended for human consumption, the director shall make or cause to be made an examination and inspection and shall report his findings and conclusions. When the issuance or the revoking of any license or permit by the department of agriculture is required to be made after an inspection involving milk quality, sanitary conditions and purity for human consumption of any milk, cream, butter or other dairy products, the issuance or revocation of license or permit shall be based upon the report or reports so made by the director.

#### **History.**

I.C., § 37-304, as added by 2014, ch. 275,  
§ 4, p. 685.

### **STATUTORY NOTES**

#### **Prior Laws.**

Former § 37-304, Milk wagons to be kept clean, which comprised S.L. 1911, ch. 190, § 4, p. 627; reen. C.L. 65:41; C.S., § 1708; I.C.A., § 36-404; am. 1955, ch. 176, § 2, p. 357, was repealed by S.L. 1967, ch. 54, § 6.

#### **Compiler's Notes.**

The phrase "the effective date of this act" in paragraph (3)(c) refers to the effective date of S.L. 2014, Chapter 275, which was effective July 1, 2014.

**37-305. Enforcement.** — The director of the department of agriculture



may bring civil actions to enjoin violations of this chapter or rules promulgated to implement the provisions of this chapter.

**History.**

I.C., § 37-305, as added by 2014, ch. 275,  
§ 5, p. 685.

**STATUTORY NOTES**

**Prior Laws.**

Former § 37-305, Milk wagons to be covered, which comprised S.L. 1911, ch. 190, § 5,

p. 627; reen. C.L. 65:42; C.S., § 1709; I.C.A., § 36-405; am. 1955, ch. 176, § 3, p. 357, was repealed by S.L. 1967, ch. 54, § 7.

**37-306. Department to cooperate with other agencies.** — The department of agriculture is hereby authorized to advise and assist and to cooperate with the federal government or any of its agencies, other departments, agencies and institutions of this state, counties, school districts, and municipalities and other public and private welfare agencies, in the exercise of any of the powers and duties of the department under this chapter.

**History.**

I.C., § 37-306, as added by 2014, ch. 275,  
§ 7, p. 685.

**STATUTORY NOTES**

**Cross References.**

Department of agriculture, § 22-101 et seq.

**Prior Laws.**

Former § 37-306, Milk-bottling place, which comprised 1911, ch. 190, § 6, p. 628;

reen. C.L. 65:43; C.S., § 1710; I.C.A., § 36-406; am. 1955, ch. 176, § 4, p. 357; am. 1974, ch. 23, § 25, p. 633; am. 1992, ch. 93, § 2, p. 295, was repealed by S.L. 2014, ch. 275, § 6, effective July 1, 2014.

**37-307. Milk haulers and tanks — Definitions.** — As used in this act, unless the context clearly requires otherwise, the following definitions are adopted:

- (1) “Milk hauler” means the operator of a transportation tank and may be an employee or the owner of the equipment.
- (2) “Farm tank” means a tank used to cool, store or cool and store milk prior to transportation to the processing plant.
- (3) “Transportation tank,” “bulk tank” and “feeder tank” mean tanks used to transport milk from a farm to a processing plant.
- (4) “Chlorine” means chlorine, or other type of sanitizer approved by the director of the department of agriculture.

**History.**

I.C., § 37-307, as added by 2014, ch. 275,  
§ 8, p. 685.

**STATUTORY NOTES**

**Prior Laws.**

Former § 37-307, Care and use of contain-

ers for delivering milk and cream, which comprised S.L. 1911, ch. 190, § 7, p. 628;

reen. C.L. 65:44; C.S., § 1711; I.C.A., § 36-407; am. 1937, ch. 107, § 1, p. 160, was repealed by S.L. 1955, ch. 176, § 5, p. 357. paragraph refers to S.L. 2014, ch. 275, which is compiled as §§ 37-301 through 37-319.

#### Compiler's Notes.

The term "this act" in the introductory

**37-308. Standards for transportation tanks.** — The following standards are hereby adopted relating to transportation tanks:

(1) The transportation tank and accessories in the milk handling operation shall comply with the requirements of the 3A sanitary standards symbol administrative council, 3A standards for transportation tanks existing at the time of the passage of this act.

(2) Suitable facilities, including hot and cold running water, detergent, brushes, sanitizers and sanitizing equipment, a concrete floor with proper drainage and waste disposal, shall be provided for washing and sanitizing of transportation tanks. Unless the truck is to be used within a few hours of the washing operation the sanitizing of the tank shall be omitted until just before the tank truck is to be used. During the interim, the tank truck shall be protected from contamination by closing port holes, etc. Since the tank truck may be sanitized on a different date and at a different time from the cleaning and washing operation, a tag shall provide space for recording this information. The washing, sanitizing and maintenance of the transportation tank and accessories shall be the responsibility of the processor or milk hauler. The department of agriculture shall be informed in writing designating the person responsible for the cleaning, sanitizing and maintenance of the transportation tank.

(3) The transportation tank and all accessories shall be thoroughly rinsed after each usage, and shall be thoroughly cleaned and sanitized daily and the tank tagged and sealed with a tag attached indicating that the tank has been washed, sanitized or washed and sanitized. This tag shall also contain the name of the person doing the work and the date on which the work was done. The tag shall be removed by the hauler at his first pickup and retained at the receiving plant for a minimum of thirty (30) days.

(4) Single length, durable, nontoxic, flexible milk conductor tubing shall be used for conveying milk from the farm tank to the transportation tank. The inside diameter of milk conductor tubing shall not be less than one and three-eighths (1 3/8) inches. If two (2) lengths of tubing are used, they shall be connected either by the use of sanitary couplings or a piece of 3A sanitary tubing with clamps which can be removed without tools. The connections between the pump and the vehicle tank, and between the pump and the milk conductor tubing shall remain assembled, except when dismantled for cleaning. The open end of the milk tubing shall be capped with an approved protective cap at all times, except when loading or unloading. The outlet valve, milk pump and the milk conductor tubing and samples shall be enclosed in a properly drained, insulated, dust-tight cabinet.

(5) The transportation tank and the accessories shall be used for no other purpose than the handling of milk unless such other use is approved by the department of agriculture.

**History.**

I.C., § 37-308, as added by 2014, ch. 275, § 10, p. 685.

**STATUTORY NOTES****Prior Laws.**

Former § 37-308, Milk must be bottled or packaged in paper cartons, which comprised 1911, ch. 190, § 8, p. 628; reen. C.L. 65:45; C.S., § 1712; am. 1929, ch. 19, § 1, p. 20; I.C.A., § 36-408; am. 1941, ch. 141, § 3, p. 274; am. 1955, ch. 176, § 6, p. 357; am. 1967, ch. 54, § 3, p. 104; am. 1974, ch. 23, § 26, p. 633; am. 1992, ch. 93, § 3, p. 295, was re-

pealed by S.L. 2014, ch. 275, § 9, effective July 1, 2014.

**Compiler's Notes.**

The phrase "at the time of the passage of this act" in subsection (1) refers to the passage of S.L. 2014, ch. 275, which was approved by the governor on March 26, 2014, and was effective July 1, 2014.

**37-309. Standards for milk haulers.** — The following standards are hereby adopted relating to milk haulers and to the operation of transportation tanks:

(1) All milk haulers must possess a permit issued by the state department of agriculture. All milk haulers shall be subject to such examination and abilities as the department of agriculture may prescribe by rule or regulation in order to receive and retain such permit. The fee for the permit shall be twenty-five dollars (\$25.00). The permit shall be valid for three (3) years and must be renewed by December 31 of the third year.

(2) The milk line shall be passed through a special port opening through the milk house wall with care to prevent contact with the ground or floor of the milk house. The port opening shall be closed when not in use.

(3) It shall be the responsibility of the milk hauler to assure that in the event the processor washes and sanitizes the truck the operation has been adequately performed, and that prior to use the tank truck has been properly sanitized. In the event it is the milk hauler's responsibility to sanitize the tank truck, it shall be done with a chlorine solution of proper strength.

(4) The milk hauler's hands shall be washed immediately before gauging the milk.

(5) The milk shall be observed and checked for abnormalities or adulterations, and all abnormal or adulterated milk shall be rejected.

(6) The milk volume in the farm tank shall be determined in a sanitary manner.

(7) The milk in the farm tank shall be thoroughly agitated. Milk samples for analysis shall be taken in a sanitary manner into properly identified sterile containers. All sampling shall follow standard methods.

(8) After the milk is pumped to the transportation tank the milk conductor tubing shall be capped and returned to the vehicle storage cabinet. Care shall be taken to prevent soiling of the milk line by contact with the milk house floor, operator's hands or the ground.

(9) The milk hauler shall rinse the farm tank and accessories free of milk with clean water immediately after emptying.

(10) The milk hauler shall be responsible for proper use of the transportation tank and accessories.



**History.**

I.C.; § 37-309, as added by 2014, ch. 275,  
§ 11, p. 685.

**STATUTORY NOTES**

**Prior Laws.**

Former § 37-309, Cans must be washed and scalded, which comprised S.L. 1911, ch. 190, § 9, p. 628; reen. C.L. 65:46; C.S., § 1713; am. 1921, ch. 119, § 1, p. 294; I.C.A., § 36-409, was repealed by S.L. 1955, ch. 176, § 7, p. 357.

**37-310. Standards for quality control of milk samples.** — The following standards are hereby adopted relating to quality control of milk samples taken from tanks:

(1) As often as is deemed necessary, the department of agriculture may take samples for analysis from each farm tank or each transportation tank.

(2) All milk samples taken from farm tanks or transportation tanks shall be taken in a sanitary manner in accordance with standard methods. Samples for bacteriological analysis shall be properly iced and transported in accordance with standard methods, thirty-two (32) to forty (40) degrees Fahrenheit.

(3) The department of agriculture shall have access to all records maintained by the receiving plant relating to butterfat, temperature and bacteriological sampling and any other samples of bulk farm tank milk.

(4) Milk samples for analysis shall be available on the farm tank pickup truck at all times during the collection period and delivery to the plant, as required by the department of agriculture.

**History.**

I.C., § 37-310, as added by 2014, ch. 275,  
§ 13, p. 685.

**STATUTORY NOTES**

**Cross References.**

Department of agriculture, § 22-101 et seq.

**Prior Laws.**

Former § 37-310, Empty bottles from quarantined premises, which comprised 1911, ch. 190, § 10, p. 628; reen. C.L. 65:47; C.S., § 1714; I.C.A., § 36-410; am. 1992, ch. 93, § 4, p. 295, was repealed by S.L. 2014, ch. 275, § 12, effective July 1, 2014.

**37-311. Reports of volumes purchased.** — All milk processors, cooperatives and organizations that procure milk from Idaho dairy farms or process milk received from other states shall, by the twentieth day of the following month in which the milk was produced or processed, provide a full and accurate account of the amount of milk purchased and the volume of dairy products processed to the department of agriculture pursuant to procedures established by the department.

**History.**

1905, p. 54, § 12; reen. R.C., § 1146; am. 1909, p. 231, § 1, subd. 1146; reen. C.L. 65:62; C.S., § 1729; I.C.A., § 36-425; am. 1955, ch. 147, § 1, p. 289; am. and redesign. 2014, ch. 275, § 21, p. 685.

### STATUTORY NOTES

#### Prior Laws.

Former § 37-311, Refilling bottles owned by others, which comprised S.L. 1911, ch. 190, § 11, p. 628; compiled and reen. C.L. 65:48; C.S., § 1715; I.C.A., § 36-411, was repealed by S.L. 1955, ch. 176, § 8, p. 357.

#### Amendments.

The 2014 amendment, by ch. 275, redesign-

nated the section from § 37-325 and rewrote the section heading and the section to the extent that a detailed comparison is impracticable.

#### Compiler's Notes.

This section was formerly compiled as § 37-325.

### **37-312. Butter and whey butter — Definitions and qualities. —**

Butter is the product made by gathering the fat of fresh or ripened milk or cream into a mass, which also contains a small portion of other milk constituents, with or without salt or a harmless coloring matter. Butter shall be clean and non-rancid and shall contain not less than eighty percent (80%) of butterfat. Whey butter or whey cream butter is the food product made by gathering the fat of fresh or ripened whey cream separated from cheese whey and formed into a mass, which also contains a small portion of other milk constituents, with or without salt or a harmless coloring matter. Whey butter shall be clean and non-rancid and shall contain not less than eighty percent (80%) butterfat. The term butter includes whey butter and whey cream butter.

#### History.

1905, p. 54, § 19; reen. R.C., § 1131; reen. C.L. 65:68; C.S., § 1735; S.L. 1929, ch. 65,

§ 1, p. 95; I.C.A., § 36-432; am. 1937, ch. 107, § 2, p. 160; am. 1988, ch. 161, § 1, p. 291; am. and redesign. 2014, ch. 275, § 24, p. 685.

### STATUTORY NOTES

#### Prior Laws.

Former § 37-312, Cold storage butter must be dated, which comprised S.L. 1911, ch. 190, § 12, p. 628; reen. C.L. 65:49; C.S., § 1716; I.C.A., § 36-412, was repealed by S.L. 1955, ch. 176, § 9, p. 357.

#### Amendments.

The 2014 amendment, by ch. 275, redesign-

nated the section from § 37-332 and substituted "percent" for "per cent" and "butterfat" for "butter fat" throughout the section; and substituted "non-rancid" for "nonrancid" in the fourth sentence of the section.

#### Compiler's Notes.

This section was formerly compiled as § 37-332.

**37-313. Butter grades. —** The grades of butter shall comply with the United States department of agriculture's 1989 "Standards for Grades of Butter." "Undergrade" butter is butter scoring less than 90 under this standard. It is hereby declared to be unlawful to sell, or offer for sale any butter within the state of Idaho unless the wrappers and containers in which said butter is packaged are conspicuously labeled as to grades. Any butter that scores less than 90 and is sold or offered for sale within the state of Idaho must be conspicuously labeled with the words "undergrade butter" upon the wrappers and container in which said butter is packaged.

#### History.

I.C., § 37-332a, as added by 1955, ch. 258, § 1, p. 598; am. 1957, ch. 75, § 1, p. 122; am.

1959, ch. 54, § 1, p. 112; am. 1988, ch. 161, § 2, p. 291; am. and redesign. 2014, ch. 275, § 25, p. 685.

### STATUTORY NOTES

#### Prior Laws.

Former § 37-313, Sale of diluted milk forbidden, which comprised 1911, ch. 190, § 13, p. 629; reen. C.L. 65:50; C.S., § 1717; I.C.A., § 36-413; am. 1955, ch. 176, § 10, p. 357, was repealed by S.L. 2014, ch. 275, § 14, effective July 1, 2014.

#### Amendments.

The 2014 amendment, by ch. 275, redesignated the section from § 37-332a and rewrote

the section to the extent that a detailed comparison is impracticable.

#### Compiler's Notes.

This section was formerly compiled as § 37-332a.

For the USDA's 1989 standards for grades of butter, see <http://www.ams.usda.gov/AMSv1.0/getfile?dDocName=STELDEV3011890>.

**37-314. Improperly graded butter.** — Butter that fails to meet the grade labeled on the butter container may be rejected. Butter that has been rejected due to failure to meet the standard may be relabeled, regraded or reprocessed if authorized by the department of agriculture.

#### History.

I.C., § 37-332b, as added by 1955, ch. 258,

§ 2, p. 598; am. 1959, ch. 54, § 2, p. 112; am. and redesign. 2014, ch. 275, § 26, p. 685.

### STATUTORY NOTES

#### Prior Laws.

Former § Milk deemed to be adulterated, which comprised 1911, ch. 190, § 14, p. 629; reen. C.L. 65:51; C.S., § 1718; I.C.A., § 36-414; am. 1935, ch. 98, § 1, p. 207; am. 1955, ch. 176, § 11, p. 357; am. 1957, ch. 167, § 1, p. 306; am. 1967, ch. 54, § 4, p. 104; am. 1974, ch. 23, § 27, p. 633; am. 1992, ch. 93, § 5, p. 295, was repealed by S.L. 2014, ch. 275, § 15, effective July 1, 2014.

#### Amendments.

The 2014 amendment, by ch. 275, redesignated the section from § 37-332b and rewrote the section heading and the section to the extent that a detailed comparison is impracticable.

#### Compiler's Notes.

This section was formerly compiled as § 37-332b.

**37-315. Advertising substitutes for dairy products.** — It shall be unlawful for any person, firm or corporation to make use of the words milk, cream, butter, cheese, creamery, dairy, churn, cow, the name of any dairy breed or any pictorial representation of any of these terms in connection with the sale, offering for sale or advertisement of any substance designed to be used as a so-called substitute for milk, cheese, butter or any other dairy products.

#### History.

1921, ch. 149, § 1, p. 341; I.C.A., § 36-434; am. and redesign. 2014, ch. 275, § 34, p. 685.

### STATUTORY NOTES

#### Prior Laws.

Former § 37-315, Milkmen afflicted with disease, which comprised 1911, ch. 190, § 15, p. 630; reen. C.L. 65:52; C.S., § 1719; I.C.A., § 36-415; am. 1974, ch. 23, § 28, p. 633; am. 1992, ch. 93, § 6, p. 295, was repealed by S.L. 2014, ch. 275, § 16, effective July 1, 2014.

#### Amendments.

The 2014 amendment, by ch. 275, redesignated the section from § 37-334.

#### Compiler's Notes.

This section was formerly compiled as § 37-334.



**37-316. Food products made to resemble dairy products — Definitions.** — As used in sections 37-315 and 37-318, Idaho Code:

(1) “Dairy product” includes:

(a) Milk, skim milk, milk fat, cream, sour cream, lowfat milk and nonfat milk used in fluid, concentrated or dry form.

(b) Cheese. All varieties including asiago, blue, brick, caciocavallo, cheddar, colby, cook cheese, cottage, cream, washed curd, edam, gammelost, gorgonzola, gouda, granular and grated, gruyere, hard, limburger, monterey, monterey jack, mozzarella, scamorze, muenster, neufchatel, nuworld, parmesan, reggiano, pasteurized, blended and processed cheeses, pasteurized cheese spreads, provolone, pasta filata, romano, roquefort, samsoe, sapsago, semi-soft and skim milk, spiced, swiss and emmentaler as described in 21 CFR, part 133.

(c) Butter as defined in section 37-312, Idaho Code.

(d) Ice cream, frozen custard, ice milk, sherbet as defined in 21 CFR, part 135, frozen yogurt dessert mix, frozen yogurt dessert, frozen lowfat and nonfat yogurt dessert, dietetic or dietary frozen dessert, lowfat or nonfat frozen dairy dessert, and milk shake base as defined in state department of agriculture dairy rules or regulations.

(e) Any manufactured food which:

1. Uses milk or a milk ingredient as the principal or characterizing constituent of the food product;

2. Does not contain ingredients added for the purpose of replacing milk or milk ingredients;

3. Does not contain milk-derived ingredients at levels in excess of those permitted in similar standardized dairy products;

4. Does not contain any vegetable-derived ingredients unless the ingredients are used as carriers or function as stabilizers or emulsifiers; and

5. Has no standard of identity recognized by any federal or state of Idaho law, rule or regulation as a dairy product.

(2) “Milk ingredient” includes milk, skim milk, milk fat, cream, sour cream, lowfat milk and nonfat milk used in fluid, concentrated or dry form.

(3) “Milk derived ingredient” includes buttermilk, whey, modified whey products, casein, lactose, lactalbumins and lactoglobulins used in fluid, concentrated or dry forms.

(4) “Artificial dairy product” means any food manufactured or labeled so as to purport to resemble the identity, intended use, composition, physical and sensory properties of a dairy product as defined in subsection (1) of this section.

(5) For the purpose and within the meaning of this act, an “artificial dairy product” shall not include a “dairy product” as defined in this section or any other manufactured food which has a federal or state of Idaho standard of identity as a food product.

Food products made to resemble those food products other than dairy products in this subsection, are exempt from the labeling requirements of this chapter.

**History.**

I.C., § 37-334a, as added by 1985, ch. 61, § 1, p. 121; am. 1987, ch. 7, § 1, p. 8; am.

1992, ch. 93, § 10, p. 295; am. and redesign. 2014, ch. 275, § 35, p. 685.

**STATUTORY NOTES****Prior Laws.**

Former § 37-316, Selling milk from infected premises, which comprised 1911, ch. 190, § 16, p. 630; am. 1917, ch. 103, § 1, p. 379; reen. C.L. 65:53; C.S., § 1720; I.C.A., § 36-416; am. 1974, ch. 23, § 29, p. 633; am. 1992, ch. 93, § 7, p. 295, was repealed by S.L. 2014, ch. 275, § 17, effective July 1, 2014.

light of the 2014 revision of chapter 3 of title 37; and, in subsection (1), substituted "rules or regulations" for "regulations" at the end of paragraph (d) and substituted "rule or regulation" for "regulation" in paragraph (e)5.

**Compiler's Notes.**

This section was formerly compiled as § 37-334a.

**Amendments.**

The 2014 amendment, by ch. 275, redesignated the section from § 37-334a and updated references throughout the section in

The term "this act" in subsection (5) refers to S.L. 1987, ch. 7, which is compiled as §§ 37-316 to 37-319.

**37-317. Quality standards for food products made to resemble dairy products.** — Quality standards (e.g., bacteria, coliform, etc.) for food products made to resemble dairy products shall be at least the equivalent of the established quality standards of the dairy product resembled.

**History.**

I.C., § 37-334d, as added by 1987, ch. 7,

§ 5, p. 8; am. and redesign. 2014, ch. 275, § 36, p. 685.

**STATUTORY NOTES****Prior Laws.**

Former § 37-317, Milk required to be cooled — When saleable, which comprised I.C., § 37-317, as added by 1957, ch. 167, § 2, p. 300; am. 1974, ch. 23, § 30, p. 633; am. 1992, ch. 93, § 8, p. 295, was repealed by S.L. 2014, ch. 275, § 18, effective July 1, 2014.

65:54; C.S., § 1721; I.C.A., § 36-417, was repealed by S.L. 1955, ch. 176, § 12, p. 357.

**Amendments.**

The 2014 amendment, by ch. 275, redesignated the section from § 37-334d.

**Compiler's Notes.**

This section was formerly compiled as § 37-334d.

**37-318. License requirements for manufacturers of food products made to resemble dairy products.** — (1) It is unlawful to engage in the manufacture of food products resembling dairy products, unless a license for the current calendar year for each separate plant or place used for such business is issued by the director of the Idaho department of agriculture.

(2) Applications for a license shall be in the form which shall be prescribed by the director of the Idaho department of agriculture.

(3) The application shall be accompanied by a fee of one hundred dollars (\$100). The fee shall be prorated on a monthly basis for any licensee that commences operations after the first quarter in any calendar year whether or not such plant was licensed during the preceding calendar year.

(4) Plant licenses are not required if the plant is located in a state other than Idaho.

(5) The director of the Idaho department of agriculture shall issue to each applicant that meets the requirements of this section, a license which

entitles the applicant to manufacture, sell, or distribute food products resembling dairy products for the then current calendar year for which the license is issued, unless the license is sooner revoked or suspended.

(6) The license shall expire at the end of each calendar year.

(7) It is unlawful for any person to sell any food product resembling dairy products which has been produced in a plant that is in an unsanitary condition.

(8) The manufacture of food products resembling dairy products under unhealthful or unsanitary conditions or which violate the provisions of sections 37-315 through 37-318, Idaho Code, and rules or regulations adopted pursuant thereto, shall be grounds for revocation or suspension of such license.

#### History.

I.C., § 37-334e, as added by 1987, ch. 7, § 6, p. 8; am. and redesign. 2014, ch. 275, § 37, p. 685.

### STATUTORY NOTES

#### Prior Laws.

Former § 37-318, Milk kept near insanitary premises, which comprised S.L. 1911, ch. 190, § 18, p. 630; compiled and reen. C.L. 65:55; C.S., § 1722; I.C.A., § 36-418, was repealed by S.L. 1955, ch. 176, § 13, p. 357.

nated the section from § 37-334e and in subsection (8), substituted "rules or regulations" for "regulations".

#### Compiler's Notes.

This section was formerly compiled as § 37-334e.

#### Amendments.

The 2014 amendment, by ch. 275, redesign-

**37-319. Penalty — Enforcement.** — (1) Any person, firm or corporation, violating the provisions of sections 37-315 through 37-318, Idaho Code, or any part or provision of any of said sections, shall be guilty of a misdemeanor and punishable by a fine not exceeding two hundred dollars (\$200) or imprisonment in the county jail not exceeding six (6) months or by both such fine and imprisonment.

(2) In addition, any products not in compliance with the provisions of sections 37-315 through 37-318, Idaho Code, shall be subject to seizure and disposition in accordance with an appropriate court order or rule adopted by the director of the department of agriculture.

#### History.

1921, ch. 149, § 2, p. 341; I.C.A., § 36-435; am. 1937, ch. 107, § 3, p. 160; am. 1985, ch.

61, § 4, p. 121; am. 1987, ch. 7, § 8, p. 8; am. and redesign. 2014, ch. 275, § 38, p. 685.

### STATUTORY NOTES

#### Prior Laws.

Former § 37-319, Skim milk — When saleable, which comprised S.L. 1911, ch. 190, § 19, p. 630; reen. C.L. 65:56; C.S., § 1723; I.C.A., § 36-419; am. 1955, ch. 176, § 14, p. 357; am. 1957, ch. 167, § 3, p. 300, was repealed by S.L. 1967, ch. 54, § 8.

nated the section from § 37-335 and updated references throughout the section in light of the 2014 revision of chapter 3 of title 37.

#### Compiler's Notes.

This section was formerly compiled as § 37-335.

#### Amendments.

The 2014 amendment, by ch. 275, redesign-



**37-322. Standard for cream. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 19, effective July 1, 2014.

**History.**

1911, ch. 190, § 22, p. 631; reen. C.L. 65:59;  
C.S., § 1726; I.C.A., § 36-422.

**37-324. Penalty for violations. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 20, effective July 1, 2014.

**History.**

C.S., § 1728; I.C.A., § 36-424; am. 1992, ch.  
1911, ch. 190, § 24, p. 631; reen. C.L. 65:61; 93, § 9, p. 295.

**37-325. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-325 was amended and redesignated as § 37-311, pursuant to S.L. 2014, ch. 275, § 21, effective July 1, 2014.

**37-326. Standards for dairy products. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 22, effective July 1, 2014.

**History.**

C.L. 65:63; C.S., § 1730; I.C.A., § 36-426; am.  
1905, p. 54, § 11; reen. R.C., § 1127; reen. 1986, ch. 101, § 1, p. 281.

**37-330. Penalty for violating sections 37-325 through 37-329. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 23, effective July 1, 2014.

**History.**

1927, ch. 28, § 1, p. 31; I.C.A., § 36-430;  
am. 1955, ch. 147, § 2, p. 289.

**37-332. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-332 was amended and redesignated as § 37-312, pursuant to S.L. 2014, ch. 275, § 24, effective July 1, 2014.

**37-332a. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-332a was amended and redesignated as § 37-313, pursuant to S.L. 2014, ch. 275, § 25, effective July 1, 2014.

**37-332b. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-332b was amended and redesignated as § 37-314, pursuant to S.L. 2014, ch. 275, § 26, effective July 1, 2014.

**37-332c. Butter graders — Employment — Notice to department — Chief grader — Responsibility of graders — Change of graders — Notice to department — Responsibility of manufacturer for wrapper — Revocation of privilege of using grade emblem. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 27, effective July 1, 2014.

**History.**

I.C., § 37-332c, as added by 1955, ch. 258, § 3, p. 598; am. 1959, ch. 54, § 3, p. 112.

**37-332d. Licensing of butter graders — Examination — Duration — Fees. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 28, effective July 1, 2014.

**History.**

I.C., § 37-332d, as added by 1955, ch. 258, § 4, p. 598; am. 1990, ch. 411, § 1, p. 1139.

**37-332e. Revocation or suspension of license. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 29, effective July 1, 2014.

**History.**

I.C., § 37-332e, as added by 1955, ch. 258, § 5, p. 598.

**37-332f. Enforcement of act by department — Rules and regulations. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 30, effective July 1, 2014.

**History.**

I.C., § 37-332f, as added by 1955, ch. 258, § 6, p. 598.

**37-332g. Violations of statute — Misdemeanor — Punishment. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 31, effective July 1, 2014.

**History.**

I.C., § 37-332g, as added by 1955, ch. 258, § 7, p. 598.

**37-332h. License fees, disposition, use. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 32, effective July 1, 2014.

**History.**

I.C., § 37-332h, as added by 1955, ch. 258,  
§ 8, p. 598.

**37-333. Weight of butter. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 33, effective July 1, 2014.

**History.**

1905, p. 54, § 20; reen. R.C., § 1132; reen.  
C.L. 65:69; C.S., § 1736; I.C.A., § 36-433.

**37-334. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-334 was amended and redesignated as § 37-315, pursuant to S.L. 2014, ch. 275, § 34, effective July 1, 2014.

**37-334a. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-334a was amended and redesignated as § 37-316, pursuant to S.L. 2014, ch. 275, § 35, effective July 1, 2014.

**37-334d. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-334d was amended and redesignated as § 37-317, pursuant to S.L. 2014, ch. 275, § 36, effective July 1, 2014.

**37-334e. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-334e was amended and redesignated as § 37-318, pursuant to S.L. 2014, ch. 275, § 37, effective July 1, 2014.

**37-335. [Amended and Redesignated.]****STATUTORY NOTES****Compiler's Notes.**

Former § 37-335 was amended and redesignated as § 37-319, pursuant to S.L. 2014, ch. 275, § 38, effective July 1, 2014.

**37-338. Department of agriculture to administer act. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 39, effective July 1, 2014.



**History.**

I.C., § 37-338, as added by 1955, ch. 147,  
§ 3, p. 289; am. 1987, ch. 7, § 9, p. 8.

**37-339. Breed name of dairy cattle carried on label of milk and milk products — Policy. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 40, effective July 1, 2014.

**History.**

1959, ch. 282, § 1, p. 593.

**37-340. Use of breed name on label unlawful unless derived exclusively from registered dairy herds — Permit. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 41, effective July 1, 2014.

**History.**

1959, ch. 282, § 2, p. 593; am. 1992, ch. 93,  
§ 11, p. 295.

**37-341. Administration and enforcement of act. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 42, effective July 1, 2014.

**History.**

1959, ch. 282, § 3, p. 593; am. 1974, ch. 23,  
§ 31, p. 633; am. 1992, ch. 93, § 12, p. 295.

**37-342. Violations of §§ 37-339 through 37-343 a misdemeanor. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 43, effective July 1, 2014.

**History.**

1959, ch. 282, § 4, p. 593.

**37-343. Injunction proceedings additional remedy for violations. [Repealed.]**

Repealed by S.L. 2014, ch. 275, § 44, effective July 1, 2014.

**History.**

1959, ch. 282, § 5, p. 593; am. 1974, ch. 23,  
§ 32, p. 633; am. 1992, ch. 93, § 13, p. 295.

## CHAPTER 6

### DAIRY ENVIRONMENTAL CONTROL ACT

**SECTION.**

37-601. Short title.

37-602. Declaration of policy and statement  
of legislative intent.

37-603. Authority and duties of director.

37-604. Definitions.

**SECTION.**

37-605. Design and construction.

37-606. Nutrient management plan.

37-607. Inspections.

37-608. Unauthorized discharges — Compliance  
schedules — Penalties.

## SECTION.

37-609. Safe harbor.

**37-601. Short title.** — This chapter shall be known and cited as the “Dairy Environmental Control Act.”

**History.**

I.C., § 37-601, as added by 2014, ch. 284,  
§ 1, p. 720.

## STATUTORY NOTES

**Prior Laws.**

Former § 37-601, Use of standard glassware required, which comprised 1927, ch. 217, § 1, p. 311; I.C.A., § 36-801; am. 1951,

ch. 14, § 1, p. 23; am. 1970, ch. 39, § 1, p. 86; am. 1992, ch. 93, § 17, p. 295, was repealed by S.L. 2011, ch. 115, § 14, effective July 1, 2011.

**37-602. Declaration of policy and statement of legislative intent.**

— (1) The legislature recognizes the importance of protecting state natural resources including surface water and ground water. It is the intent of the legislature to protect the quality of these natural resources while maintaining an ecologically sound, economically viable and socially responsible dairy industry in the state. This chapter is intended to ensure that dairy waste systems are constructed, operated and maintained in a manner which protects the natural resources of the state.

(2) Further, the legislature recognizes that the dairy industry is potentially subject to various state and federal laws designed to protect state natural resources and that the Idaho department of agriculture is in the best position to administer and implement these various laws. It is therefore the intent of the legislature that the administration of this chapter by the department of agriculture fully meets the goals and requirements of the federal clean water act and state laws designed to further protect state waters.

(3) Successful implementation of this chapter is dependent upon the department receiving adequate funding from the legislature and upon effective coordination between the department of agriculture, the department of environmental quality and the Idaho dairymen’s association to ensure compliance with this chapter and applicable state and federal laws, including the federal clean water act. Moreover, the legislature recognizes that it is important for the state to obtain an approved national pollutant discharge elimination system (NPDES) permit program from the environmental protection agency (EPA) under the clean water act. If such approval is obtained, the director of the department of environmental quality and the director of the department of agriculture shall, as appropriate, establish an agreement relating to the administration of any NPDES permit program that recognizes the expertise of the department of agriculture.

**History.**

I.C., § 37-602, as added by 2014, ch. 284,  
§ 1, p. 720.

## STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.  
Department of environmental quality,  
§ 39-104.

**Prior Laws.**

Former § 37-602, Fee for testing glassware, which comprised 1927, ch. 217, § 2, p. 311; I.C.A., § 36-802; am. 1967, ch. 35, § 1, p. 59, was repealed by S.L. 1970, ch. 39, § 2, p. 86.

**Federal References.**

The federal clean water act, referred to in

subsections (2) and (3), is codified as 33 U.S.C.S. § 1251 et seq.

**Compiler's Notes.**

For further information on the Idaho dairy-men's association, see <http://www.idahodairymens.org/>.

For further information on the national pollution discharge elimination system (NPDES), see <http://cfpub.epa.gov/npdes/>.

The abbreviations enclosed in parentheses so appeared in the law as enacted.

**37-603. Authority and duties of director.** — (1) Notwithstanding the provisions of chapters 1 and 36, title 39, Idaho Code, the director of the department of agriculture shall be solely responsible for protecting ground water within the boundaries of dairy farms regulated under this chapter and solely responsible for protecting surface water within the boundaries of dairy farms regulated under this chapter that are not under, or required to be under, an NPDES permit issued by the federal EPA or the department of environmental quality. The department is authorized to adopt rules to implement the provisions in this chapter.

(2) Except as provided in section 37-609, Idaho Code, nothing in this chapter shall affect the authority of the department of environmental quality regarding surface or ground water quality or violation of surface or ground water quality standards beyond the boundaries of dairy farms regulated under this chapter. In addition, nothing in this chapter shall affect the authority of the department of environmental quality to implement an NPDES permit program for dairy farms.

(3) The director shall have the authority to exercise any other authorities delegated by the director of the department of environmental quality regarding the protection of ground water, surface water and other natural resources associated with dairy farms, and this shall be the authority for the director of the department of environmental quality to so delegate.

(4) The director of the department of environmental quality shall consult with the director of the department of agriculture before certifying discharges from dairy farms as provided under 33 U.S.C. section 1341.

**History.**

I.C., § 37-603, as added by 2014, ch. 284,  
§ 1, p. 720.

## STATUTORY NOTES

**Cross References.**

Department of agriculture, § 22-101 et seq.  
Department of environmental quality,  
§ 39-104.

**Prior Laws.**

Former § 37-603, Standard Babcock testing glassware, which comprised 1927, ch. 217,

§ 5, p. 311; I.C.A., § 36-803, was repealed by S.L. 2011, ch. 115, § 14, effective July 1, 2011.

**Compiler's Notes.**

For further information on the national pollution discharge elimination system (NPDES), see <http://cfpub.epa.gov/npdes/>.



**37-604. Definitions.** — When used in this chapter:

(1) “Best management practice” means a practice, technique or measure that is determined to be a reasonable precaution, a cost-effective and practicable means of preventing or reducing the discharge of pollutants from a point source or a nonpoint source to a level compatible with environmental goals, including water quality goals and standards.

(2) “Dairy farm” means land owned or operated by a dairy farm and is a place or premises where one (1) or more milking cows, sheep or goats are kept, and from which all or a portion of the milk produced thereon is delivered, sold or offered for sale for human consumption.

(3) “Dairy waste” means manure and process wastewater that may also contain bedding, spilled feed, compost, water or soil. It also includes wastes not particularly associated with manure, such as milking center or washing wastes, milk, feed leachate, or livestock carcasses or parts thereof.

(4) “Dairy waste system” or “waste system” means the portion of a dairy farm where dairy waste is stored, collected or treated. This may include corrals, feeding areas, waste collection systems, waste conveyance systems, waste storage ponds, waste treatment lagoons and evaporative ponds.

(5) “Department” means the Idaho department of agriculture.

(6) “Director” means the director of the Idaho department of agriculture or his designee.

(7) “Modification” or “modified” means structural changes and alterations to the dairy waste system that would require increased storage or containment capacity or such changes that would alter the function of the waste system.

(8) “Noncompliance” means a practice or condition that: causes an unauthorized discharge; or, if left uncorrected, will cause an unauthorized discharge, or does not meet nutrient management standards and comply with a nutrient management plan.

(9) “National pollutant discharge elimination system” (NPDES) means the point source permitting program established pursuant to section 402 of the federal clean water act.

(10) “Nutrient management plan” means a plan prepared in conformance with the nutrient management standard or other equally protective standard for managing the amount, placement, form and timing of the land application of nutrients and soil amendments.

(11) “Person” means any individual, association, partnership, firm, joint stock company, joint venture, trust, estate, political subdivision, public or private corporation, state or federal governmental department, agency or instrumentality, or any legal entity that is recognized by law as the subject of rights and duties.

(12) “Process wastewater” means liquid containing dairy manure.

(13) “Unauthorized discharge” means a discharge of dairy waste to state surface waters or ground waters, or beyond a dairy farm’s property boundaries that does not meet the requirements of this chapter or ground water or surface water quality standards.

**History.**

I.C., § 37-604, as added by 2014, ch. 284,  
§ 1, p. 720.

**STATUTORY NOTES****Cross References.**

Department of agriculture, § 22-101 et seq.

referred to in subsection (9), is codified as 33  
U.S.C.S. § 402.

**Prior Laws.**

Former § 37-604, Violation a misdemeanor,  
which comprised 1927, ch. 217, § 3, p. 311;  
I.C.A., § 36-804, was repealed by S.L. 2011,  
ch. 115, § 14, effective July 1, 2011.

**Compiler's Notes.**

For further information on the national  
pollution discharge elimination system  
(NPDES), see <http://cfpub.epa.gov/npdes/>.

**Federal References.**

Section 402 of the federal clean water act,

**37-605. Design and construction.** — Each new dairy farm and each modified dairy farm shall design and construct all new and modified waste systems in accordance with rules adopted by the director pursuant to this chapter. Such design and construction shall be considered a best management practice.

**History.**

I.C., § 37-605, as added by 2014, ch. 284,  
§ 1, p. 720.

**STATUTORY NOTES****Prior Laws.**

Former § 37-605, Action by prosecuting attorney, which comprised 1927, ch. 217, § 4, p.

311; I.C.A., § 36-805, was repealed by S.L.  
2011, ch. 115, § 14, effective July 1, 2011.

**37-606. Nutrient management plan.** — (1) All dairy farms shall have a nutrient management plan approved by the department. The nutrient management plan shall cover the dairy farm site and other land owned and operated by the dairy farm owner or operator. Nutrient management plans submitted to the department by the dairy farm shall include the names and addresses of each recipient of that dairy farm's livestock waste, the number of acres to which the livestock waste is applied and the amount of such livestock waste received by each recipient. The information provided in this subsection shall be available to the county in which the dairy farm, or the land upon which the livestock waste is applied, is located. If livestock waste is converted to compost before it leaves the dairy farm, only the first recipient of the compost must be listed in the nutrient management plan as a recipient of livestock waste from the dairy farm. Existing dairy farms shall submit a nutrient management plan to the department.

(2) Any new dairy farms or dairy farms that change owners or operators shall have an approved nutrient management plan on file with the department prior to the issuance of the milk permit for that dairy. The nutrient management plan shall be implemented upon approval of the plan by the department.

(3) The nutrient management plan, and all information generated by the dairy as a result of such plan, shall be deemed to be trade secrets, production

records or other proprietary information, shall be kept confidential and shall be exempt from disclosure pursuant to section 9-340D, Idaho Code.

**History.**

I.C., § 37-606, as added by 2014, ch. 284,  
§ 1, p. 720.

**STATUTORY NOTES****Prior Laws.**

Former § 37-606, Time of taking effect,  
which comprised 1927, ch. 217, § 6, p. 311;

I.C.A., § 36-806, was repealed by S.L. 2011,  
ch. 115, § 14, effective July 1, 2011.

**37-607. Inspections.** — (1) The director or his designee is authorized to enter and inspect any dairy farm to determine that dairy waste has been managed to prevent an unauthorized discharge or contamination of surface and ground water, and to determine compliance with a nutrient management plan. The director shall have access to or copy any facility records deemed necessary to ensure compliance with this chapter and the federal clean water act. The director shall comply with the biosecurity protocol of the operation so long as the protocol does not inhibit reasonable access to:

- (a) Enter and inspect at reasonable times the premises or land application site or sites of a dairy farm;
- (b) Review, copy or review and copy at reasonable times any records that must be kept under conditions of this chapter;
- (c) Sample or monitor at reasonable times substances or parameters directly related to compliance with an NPDES permit or this chapter.

(2) All inspections and investigations conducted under the authority of this chapter shall be performed in conformity with section 17, article I of the constitution of the state of Idaho. The state shall not, under the authority granted by this chapter, conduct warrantless searches of private property in the absence of either consent from the property owner or other authorized person.

**History.**

I.C., § 37-607, as added by 2014, ch. 284,  
§ 1, p. 720.

**STATUTORY NOTES****Compiler's Notes.**

For further information on the national

pollution discharge elimination system  
(NPDES), see <http://cfpub.epa.gov/npdes/>.

**37-608. Unauthorized discharges — Compliance schedules — Penalties.** — (1) No dairy farm shall cause an unauthorized discharge.

(2) Noncompliance with requirements for dairy waste systems, with nutrient management standards, and with nutrient management plans shall be addressed through corrective actions and compliance schedules pursuant to rules adopted by the director.

(3) For unauthorized discharges and noncompliance conditions, the director or his designee shall have the authority to assess a fine of up to ten thousand dollars (\$10,000) per occurrence. Civil penalties collected under



this subsection shall be remitted to the county where the violation occurred for deposit in the county current expense fund.

**History.**

I.C., § 37-608, as added by 2014, ch. 284,  
§ 1, p. 720.

**37-609. Safe harbor.** — (1) Dairy farms and discharges operating in compliance with this chapter shall not be subject to state enforcement action due to violations of state water quality standards or state ground water quality standards except in the event of imminent and substantial danger as provided in chapter 1, title 39, Idaho Code.

(2) In any case in which the United States environmental protection agency initiates an enforcement action regarding an alleged noncompliance at a dairy farm, any pending administrative or civil enforcement action initiated by the director regarding the same alleged noncompliance shall be deemed void. If a compliance order addressing the alleged noncompliance has already been issued by the director, that order shall remain in full force and effect.

**History.**

I.C., § 37-609, as added by 2014, ch. 284,  
§ 1, p. 720.

## CHAPTER 7

### PASTEURIZATION OF MARKET MILK AND MARKET MILK PRODUCTS

**SECTION.**

37-701 — 37-711. [Repealed.]

**37-701. Statement of purpose. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.**

I.C.A., § 36-1801, as added by 1947, ch. 128, § 1, p. 305.

**37-702. Definitions. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.**

I.C.A., § 36-1802, as added by 1947, ch. 128, § 1, p. 305; am. 1967, ch. 53, § 1, p. 99; am. 1974, ch. 23, § 33, p. 633; am. 1992, ch. 93, § 18, p. 295.

**37-703. Director of department of agriculture to enforce. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.** 128, § 1, p. 305; am. 1974, ch. 23, § 34, p. 633; am. 1992, ch. 93, § 19, p. 295.  
I.C.A., § 36-1803, as added by 1947, ch.

**37-705. Certificate to be renewed annually. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.** 128, § 1, p. 305; am. 1992, ch. 93, § 20, p. 295.  
I.C.A., § 36-1805, as added by 1947, ch.

**37-706. Certificate necessary for labeling as pasteurized. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.** 128, § 1, p. 305; am. 1974, ch. 23, § 35, p. 633; am. 1992, ch. 93, § 21, p. 295.  
I.C.A., § 36-1806, as added by 1947, ch.

**37-707. Standards for equipment and sanitation. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.** am. 1974, ch. 23, § 36, p. 633; am. 1992, ch. 93, § 22, p. 295.  
I.C.A., § 36-1807, as added by 1947, ch.  
128, § 1, p. 305; am. 1967, ch. 53, § 2, p. 99;

**37-708. Rules, regulations and standards to be prescribed. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.** 128, § 1, p. 305; am. 1974, ch. 23, § 37, p. 633; am. 1992, ch. 93, § 23, p. 295.  
I.C.A., § 36-1808, as added by 1947, ch.

**37-709. Penalty for violations. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.**  
I.C.A., § 36-1809, as added by 1947, ch.  
128, § 1, p. 305.

**37-710. Injunctions against violations. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.** 128, § 1, p. 305; am. 1992, ch. 93, § 24, p. 295.  
I.C.A., § 36-1810, as added by 1947, ch.

**37-711. Separability. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 2, effective July 1, 2014.

**History.**  
I.C.A., § 36-1811, as added by 1947, ch.  
128, § 1, p. 305.

## CHAPTER 8

# GRADES OF QUALITY FOR MILK AND MILK PRODUCTS

### SECTION.

37-801 — 37-813. [Repealed.]

### 37-801. Use of grade terms restricted. [Repealed.]

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

#### History.

I.C.A., § 36-1701, as added by 1941, ch. 141, § 1, p. 274; am. 1951, ch. 157, § 1, p. 352; am. 1967, ch. 46, § 1, p. 86; am. 1974, ch. 23, § 38, p. 633; am. 1992, ch. 93, § 25, p. 295.

### 37-802. Licenses. [Repealed.]

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

#### History.

I.C.A., § 36-1702, as added by 1941, ch. 141, § 1, p. 274; am. 1974, ch. 23, § 39, p. 633; am. 1992, ch. 93, § 26, p. 295.

### 37-803. Rules and regulations. [Repealed.]

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

#### History.

I.C.A., § 36-1703, as added by 1941, ch. 141, § 1, p. 274; am. 1974, ch. 23, § 40, p. 633; am. 1992, ch. 93, § 27, p. 295.

### 37-804. Revocation of licenses. [Repealed.]

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

#### History.

I.C.A., § 36-1704, as added by 1941, ch. 141, § 1, p. 274.

### 37-805. Definitions. [Repealed.]

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

#### History.

I.C.A., § 36-1705, as added by 1941, ch. 141, § 1, p. 274; am. 1951, ch. 157, § 2, p. 352; am. 1974, ch. 23, § 41, p. 633; am. 1992, ch. 93, § 28, p. 295.

### 37-806. Penalty for violations — Injunctions. [Repealed.]

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

#### History.

I.C.A., § 36-1706, as added by 1941, ch. 141, § 1, p. 274; am. 1992, ch. 93, § 29, p. 295.

### 37-807. Separability. [Repealed.]

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.



**History.**

1941, ch. 141, § 2, p. 274.

**37-808. Policy to improve dairy quality requirements. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

**History.**

1959, ch. 82, § 1, p. 191.

**37-810. Administration of act — Publication of grade standards. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

**History.**

§ 1, p. 316; am. 1974, ch. 23, § 42, p. 633; am. 1959, ch. 82, § 3, p. 191; am. 1965, ch. 163, 1992, ch. 93, § 30, p. 295.

**37-811. Compliance with naming and grading regulations required. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 3, effective July 1, 2014.

**History.**

1959, ch. 82, § 4, p. 191.

## CHAPTER 10

### DISCRIMINATION AND UNFAIR COMPETITION IN BUYING AND SELLING DAIRY PRODUCTS

**SECTION.**

37-1001 — 37-1015. [Repealed.]

**37-1001. Discrimination by buying at higher price — Prima facie evidence — Grades of cream. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 1, p. 157; am. 1925, ch. 78, § 1, p. 112; I.C.A., § 36-1101.

**37-1002. Discrimination by selling at lower price — Unfair discrimination defined. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 2, p. 157; am. 1927, ch. 221, § 1, p. 320; I.C.A., § 36-1102.

**37-1003. Special rebates, collateral contracts, and other devices. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 3, p. 157; I.C.A., § 36-1103.

**37-1003a. Definitions. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

I.C.A., § 36-1103A, as added by 1949, ch. 275, § 1, p. 560.

**37-1003b. Unfair and unlawful practices enumerated. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

I.C.A., § 36-1103B, as added by 1949, ch. 275, § 1, p. 560; am. 1983, ch. 36, § 1, p. 86.

**37-1004. Penalties. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 4, p. 157; I.C.A., § 36-1104.

**37-1005. Duty of director of department of agriculture. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 5, p. 157; I.C.A., § 36-1106; am. 1974, ch. 18, § 261, p. 364.

**37-1006. Prosecutions. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 6, p. 157; I.C.A., § 36-1106; am. 1974, ch. 18, § 262, p. 364.

**37-1007. Person injured may maintain action. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 7, p. 157; I.C.A., § 36-1107.

**37-1008. Prohibited contracts void. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 8, p. 157; I.C.A., § 36-1108.

**37-1009. Revocation of corporate charter. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 9, p. 157; I.C.A., § 36-1109.

**37-1010. Separability. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1923, ch. 121, § 10, p. 157; I.C.A., § 36-1110.

**37-1011. Definitions. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1963, ch. 190, § 2, p. 579; 1965, ch. 150, § 1, p. 289.

**37-1012. Unlawful marketing practices in connection with sale of dairy products — Exceptions. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1963, ch. 190, § 3, p. 579.

**37-1013. Violation of a misdemeanor — Penalty. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1963, ch. 190, § 4, p. 579.

**37-1014. Enjoining violations — Costs — Damages. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1963, ch. 190, § 5, p. 579.

**37-1015. Trade association may maintain action. [Repealed.]**

Repealed by S.L. 2014, ch. 284, § 4, effective July 1, 2014.

**History.**

1963, ch. 190, § 6, p. 579.



## CHAPTER 27

### UNIFORM CONTROLLED SUBSTANCES

#### Article I

##### SECTION.

37-2701. Definitions.

#### Article II

37-2705. Schedule I.

37-2709. Schedule III.

37-2711. Schedule IV.

37-2713. Schedule V.

#### Article III

##### SECTION.

37-2716. Registration requirements.

37-2726. Filing prescriptions — Database.

37-2730A. Prescription tracking program.

#### Article V

37-2744. Forfeitures.

### Article I

**37-2701. Definitions.** — As used in this chapter:

(a) “Administer” means the direct application of a controlled substance whether by injection, inhalation, ingestion, or any other means, to the body of a patient or research subject by:

(1) A practitioner or, in his presence, by his authorized agent; or

(2) The patient or research subject at the direction and in the presence of the practitioner.

(b) “Agent” means an authorized person who acts on behalf of or at the direction of a manufacturer, distributor or dispenser. It does not include a common or contract carrier, public warehouseman or employee of the carrier or warehouseman.

(c) “Board” means the state board of pharmacy created in chapter 17, title 54, Idaho Code, or its successor agency.

(d) “Bureau” means the drug enforcement administration, United States department of justice, or its successor agency.

(e) “Controlled substance” means a drug, substance or immediate precursor in schedules I through VI of article II of this chapter.

(f) “Counterfeit substance” means a controlled substance which, or the container or labeling of which, without authorization, bears the trademark, trade name, or other identifying mark, imprint, number or device, or any likeness thereof, of a manufacturer, distributor or dispenser other than the person who in fact manufactured, distributed or dispensed the substance.

(g) “Deliver” or “delivery” means the actual, constructive, or attempted transfer from one (1) person to another of a controlled substance, whether or not there is an agency relationship.

(h) “Director” means the director of the Idaho state police.

(i) “Dispense” means to deliver a controlled substance to an ultimate user or research subject by or pursuant to the lawful order of a practitioner, including the prescribing, administering, packaging, labeling, or compounding necessary to prepare the substance for that delivery.

(j) “Dispenser” means a practitioner who dispenses.

(k) “Distribute” means to deliver other than by administering or dispensing a controlled substance.

(l) “Distributor” means a person who distributes.

(m) "Drug" means (1) substances recognized as drugs in the official United States Pharmacopoeia, official Homeopathic Pharmacopoeia of the United States, or official National Formulary, or any supplement to any of them; (2) substances intended for use in the diagnosis, cure, mitigation, treatment or prevention of disease in man or animals; (3) substances, other than food, intended to affect the structure or any function of the body of man or animals; and (4) substances intended for use as a component of any article specified in clause (1), (2), or (3) of this subsection. It does not include devices or their components, parts, or accessories.

(n) "Drug paraphernalia" means all equipment, products and materials of any kind which are used, intended for use, or designed for use, in planting, propagating, cultivating, growing, harvesting, manufacturing, compounding, converting, producing, processing, preparing, testing, analyzing, packaging, repackaging, storing, containing, concealing, injecting, ingesting, inhaling, or otherwise introducing into the human body a controlled substance in violation of this chapter. It includes, but is not limited to:

- (1) Kits used, intended for use, or designed for use in planting, propagating, cultivating, growing or harvesting of any species of plant which is a controlled substance or from which a controlled substance can be derived;
- (2) Kits used, intended for use, or designed for use in manufacturing, compounding, converting, producing, processing or preparing controlled substances;
- (3) Isomerization devices used, intended for use, or designed for use in increasing the potency of any species of plant which is a controlled substance;
- (4) Testing equipment used, intended for use, or designed for use in identifying, or in analyzing the strength, effectiveness or purity of controlled substances;
- (5) Scales and balances used, intended for use, or designed for use in weighing or measuring controlled substances;
- (6) Diluents and adulterants, such as quinine hydrochloride, mannitol, mannite, dextrose and lactose, used, intended for use, or designed for use in cutting controlled substances;
- (7) Separation gins and sifters used, intended for use, or designed for use in removing twigs and seeds from, or in otherwise cleaning or refining, marijuana;
- (8) Blenders, bowls, containers, spoons and mixing devices used, intended for use, or designed for use in compounding controlled substances;
- (9) Capsules, balloons, envelopes and other containers used, intended for use, or designed for use in packaging small quantities of controlled substances;
- (10) Containers and other objects used, intended for use, or designed for use in storing or concealing controlled substances;
- (11) Hypodermic syringes, needles and other objects used, intended for use, or designed for use in parenterally injecting controlled substances into the human body;
- (12) Objects used, intended for use, or designed for use in ingesting, inhaling, or otherwise introducing marijuana, cocaine, hashish, or hashish oil into the human body, such as:

- (i) Metal, wooden, acrylic, glass, stone, plastic, or ceramic pipes with or without screens, permanent screens, hashish heads, or punctured metal bowls;
- (ii) Water pipes;
- (iii) Carburetion tubes and devices;
- (iv) Smoking and carburetion masks;
- (v) Roach clips: meaning objects used to hold burning material, such as a marijuana cigarette, that has become too small or too short to be held in the hand;
- (vi) Miniature cocaine spoons, and cocaine vials;
- (vii) Chamber pipes;
- (viii) Carburetor pipes;
- (ix) Electric pipes;
- (x) Air-driven pipes;
- (xi) Chillums;
- (xii) Bongs;
- (xiii) Ice pipes or chillers;

In determining whether an object is drug paraphernalia, a court or other authority should consider, in addition to all other logically relevant factors, the following:

1. Statements by an owner or by anyone in control of the object concerning its use;
2. Prior convictions, if any, of an owner, or of anyone in control of the object, under any state or federal law relating to any controlled substance;
3. The proximity of the object, in time and space, to a direct violation of this chapter;
4. The proximity of the object to controlled substances;
5. The existence of any residue of controlled substances on the object;
6. Direct or circumstantial evidence of the intent of an owner, or of anyone in control of the object, to deliver it to persons whom he knows, or should reasonably know, intend to use the object to facilitate a violation of this chapter; the innocence of an owner, or of anyone in control of the object, as to a direct violation of this chapter shall not prevent a finding that the object is intended for use, or designed for use as drug paraphernalia;
7. Instructions, oral or written, provided with the object concerning its use;
8. Descriptive materials accompanying the object which explain or depict its use;
9. National and local advertising concerning its use;
10. The manner in which the object is displayed for sale;
11. Whether the owner, or anyone in control of the object, is a legitimate supplier of like or related items to the community, such as a licensed distributor or dealer of tobacco products;
12. Direct or circumstantial evidence of the ratio of sales of the object(s) to the total sales of the business enterprise;
13. The existence and scope of legitimate uses for the object in the community;



14. Expert testimony concerning its use.

(o) "Financial institution" means any bank, trust company, savings and loan association, savings bank, mutual savings bank, credit union, or loan company under the jurisdiction of the state or under the jurisdiction of an agency of the United States.

(p) "Immediate precursor" means a substance which the board has found to be and by rule designates as being the principal compound commonly used or produced primarily for use, and which is an immediate chemical intermediary used or likely to be used in the manufacture of a controlled substance, the control of which is necessary to prevent, curtail or limit manufacture.

(q) "Isomer" means the optical isomer, except as used in section 37-2705(d), Idaho Code.

(r) "Law enforcement agency" means a governmental unit of one (1) or more persons employed full-time or part-time by the state or a political subdivision of the state for the purpose of preventing and detecting crime and enforcing state laws or local ordinances, employees of which unit are authorized to make arrests for crimes while acting within the scope of their authority.

(s) "Manufacture" means the production, preparation, propagation, compounding, conversion or processing of a controlled substance, and includes extraction, directly or indirectly, from substances of natural origin, or independently by means of chemical synthesis, or by a combination of extraction and chemical synthesis, and includes any packaging or repackaging of the substance or labeling or relabeling of its container, except that this term does not include the preparation or compounding of a controlled substance:

- (1) By a practitioner as an incident to his administering or dispensing of a controlled substance in the course of his professional practice; or
- (2) By a practitioner, or by his authorized agent under his supervision, for the purpose of, or as an incident to, research, teaching, or chemical analysis and not for delivery.

(t) "Marijuana" means all parts of the plant of the genus *Cannabis*, regardless of species, and whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. It does not include the mature stalks of the plant unless the same are intermixed with prohibited parts thereof, fiber produced from the stalks, oil or cake made from the seeds or the achene of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of the mature stalks, except the resin extracted therefrom or where the same are intermixed with prohibited parts of such plant, fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination. Evidence that any plant material or the resin or any derivative thereof, regardless of form, contains any of the chemical substances classified as tetrahydrocannabinols shall create a presumption that such material is "marijuana" as defined and prohibited herein.

(u) "Narcotic drug" means any of the following, whether produced directly or indirectly by extraction from substances of vegetable origin, or indepen-

dently by means of chemical synthesis, or by a combination of extraction and chemical synthesis:

- (1) Opium and opiate, and any salt, compound, derivative, or preparation of opium or opiate.
- (2) Any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of the substances referred to in clause 1, but not including the isoquinoline alkaloids of opium.
- (3) Opium poppy and poppy straw.
- (4) Coca leaves and any salt, compound, derivative, or preparation of coca leaves, and any salt, compound, isomer, derivative, or preparation thereof which is chemically equivalent or identical with any of these substances, but not including decocainized coca leaves or extractions of coca leaves which do not contain cocaine or ecgonine.
- (v) "Opiate" means any substance having an addiction-forming or addiction-sustaining liability similar to morphine or being capable of conversion into a drug having addiction-forming or addiction-sustaining liability. It does not include, unless specifically designated as controlled under section 37-2702, Idaho Code, the dextrorotatory isomer of 3-methoxy-n-methylmorphinan and its salts (dextromethorphan). It does include its racemic and levorotatory forms.
- (w) "Opium poppy" means the plant of the species *Papaver somniferum* L., except its seeds.
- (x) "Peace officer" means any duly appointed officer or agent of a law enforcement agency, as defined herein, including, but not limited to, a duly appointed investigator or agent of the Idaho state police, an officer or employee of the board of pharmacy, who is authorized by the board to enforce this chapter, an officer of the Idaho state police, a sheriff or deputy sheriff of a county, or a marshal or policeman of any city.
- (y) "Person" means individual, corporation, government, or governmental subdivision or agency, business trust, estate, trust, partnership or association, or any other legal entity.
- (z) "Poppy straw" means all parts, except the seeds, of the opium poppy, after mowing.
- (aa) "Practitioner" means:
  - (1) A physician, dentist, veterinarian, scientific investigator, or other person licensed, registered or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of his professional practice or research in this state;
  - (2) A pharmacy, hospital, or other institution licensed, registered, or otherwise permitted to distribute, dispense, conduct research with respect to or to administer a controlled substance in the course of its professional practice or research in this state.
- (bb) "Prescriber" means an individual currently licensed, registered or otherwise authorized to prescribe and administer controlled substances in the course of professional practice.
- (cc) "Production" includes the manufacture, planting, cultivation, growing, or harvesting of a controlled substance.
- (dd) "Simulated controlled substance" means a substance that is not a controlled substance, but which by appearance or representation would lead



a reasonable person to believe that the substance is a controlled substance. Appearance includes, but is not limited to, color, shape, size, and markings of the dosage unit. Representation includes, but is not limited to, representations or factors of the following nature:

- (1) Statements made by an owner or by anyone else in control of the substance concerning the nature of the substance, or its use or effect;
- (2) Statements made to the recipient that the substance may be resold for inordinate profit; or
- (3) Whether the substance is packaged in a manner normally used for illicit controlled substances.

(ee) "State," when applied to a part of the United States, includes any state, district, commonwealth, territory, insular possession thereof, and any area subject to the legal authority of the United States of America.

(ff) "Ultimate user" means a person who lawfully possesses a controlled substance for his own use or for the use of a member of his household or for administering to an animal owned by him or by a member of his household.

(gg) "Utility" means any person, association, partnership or corporation providing telephone and/or communication services, electricity, natural gas or water to the public.

#### History.

I.C., § 37-2701, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 1, p. 261; am. 1974, ch. 27, § 78, p. 811; am. 1975, ch. 196, § 1, p. 545; am. 1980, ch. 388, § 1, p. 977; am. 1982, ch. 169, § 1, p. 442; am. 1983, ch. 218,

§ 1, p. 599; am. 1989, ch. 266, § 1, p. 646; am. 1995, ch. 116, § 23, p. 386; am. 1999, ch. 280, § 1, p. 696; am. 2000, ch. 469, § 84, p. 1450; am. 2010, ch. 118, § 2, p. 256; am. 2014, ch. 79, § 1, p. 211.

### STATUTORY NOTES

#### Amendments.

The 2014 amendment, by ch. 79, substituted "this chapter" for "this act" throughout the section; substituted "drug enforcement administration" for "Bureau of Narcotic and

Dangerous Drugs" in subsection (d); and inserted present subsection (bb) and redesignated the subsequent subsections accordingly.

## Article II

**37-2705. Schedule I.** — (a) The controlled substances listed in this section are included in schedule I.

(b) Any of the following opiates, including their isomers, esters, ethers, salts, and salts of isomers, esters, and ethers, unless specifically excepted, whenever the existence of these isomers, esters, ethers and salts is possible within the specific chemical designation:

- (1) Acetyl-alpha-methylfentanyl (N-[1-(1-methyl-2-phenethyl)-4-piperidinyl]-N-phenylacetamide);
- (2) Acetylmethadol;
- (3) Allylprodine;
- (4) Alphacetylmethadol (except levo-alphacetylmethadol also known as levo-alpha-acetylmethadol, levomethadyl acetate or LAAM);
- (5) Alphameprodine;
- (6) Alphamethadol;



- (7) Alpha-methylfentanyl;
- (8) Alpha-methylthiofentanyl (N-[1-methyl-2-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (9) Benzethidine;
- (10) Betacetylmethadol;
- (11) Beta-hydroxyfentanyl (N-[1-(2-hydroxy-2-phenethyl)-4-piperidinyl]-N-phenylpropanamide);
- (12) Beta-hydroxy-3-methylfentanyl (N-(1-(2-hydroxy-2-phenethyl)-3-methyl-4-piperidinyl)-N-phenylpropanamide);
- (13) Betameprodine;
- (14) Betamethadol;
- (15) Betaprodine;
- (16) Clonitazene;
- (17) Dextromoramide;
- (18) Diampromide;
- (19) Diethylthiambutene;
- (20) Difenoxin;
- (21) Dimenoxadol;
- (22) Dimepheptanol;
- (23) Dimethylthiambutene;
- (24) Dioxaphetyl butyrate;
- (25) Dipipanone;
- (26) Ethylmethylthiambutene;
- (27) Etonitazene;
- (28) Etoxidine;
- (29) Furethidine;
- (30) Hydroxypethidine;
- (31) Ketobemidone;
- (32) Levomoramide;
- (33) Levophenacetylmorphan;
- (34) 3-Methylfentanyl;
- (35) 3-methylthiofentanyl (N-[(3-methyl-1-(2-thienyl)ethyl-4-piperidinyl]-N-phenylpropanamide);
- (36) Morpheridine;
- (37) MPPP (1-methyl-4-phenyl-4-propionoxypiperidine);
- (38) Noracymethadol;
- (39) Norlevorphanol;
- (40) Normethadone;
- (41) Norpipanone;
- (42) Para-fluorofentanyl (N-(4-fluorophenyl)-N-[1-(2-phenethyl)-4-piperidinyl] propanamide);
- (43) PEPAP (1-(2-phenethyl)-4-phenyl-4-acetoxypiperidine);
- (44) Phenadoxone;
- (45) Phenampromide;
- (46) Phenomorphan;
- (47) Phenoperidine;
- (48) Piritramide;
- (49) Proheptazine;

- (50) Properidine;
- (51) Propiram;
- (52) Racemoramide;
- (53) Thiofentanyl (N-phenyl-N-[1-(2-thienyl)ethyl-4-piperidinyll-propanamide);
- (54) Tilidine;
- (55) Trimeperidine.

(c) Any of the following opium derivatives, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers and salts of isomers is possible within the specific chemical designation:

- (1) Acetorphine;
- (2) Acetyldihydrocodeine;
- (3) Benzylmorphine;
- (4) Codeine methylbromide;
- (5) Codeine-N-Oxide;
- (6) Cyprenorphine;
- (7) Desomorphine;
- (8) Dihydromorphine;
- (9) Drotebanol;
- (10) Etorphine (except hydrochloride salt);
- (11) Heroin;
- (12) Hydromorphenol;
- (13) Methyldesorphine;
- (14) Methyldihydromorphine;
- (15) Morphine methylbromide;
- (16) Morphine methylsulfonate;
- (17) Morphine-N-Oxide;
- (18) Myrophine;
- (19) Nicocodeine;
- (20) Nicomorphine;
- (21) Normorphine;
- (22) Pholcodine;
- (23) Thebacon.

(d) Hallucinogenic substances. Any material, compound, mixture or preparation which contains any quantity of the following hallucinogenic substances, their salts, isomers and salts of isomers, unless specifically excepted, whenever the existence of these salts, isomers, and salts of isomers is possible within the specific chemical designation (for purposes of this paragraph only, the term "isomer" includes the optical, position and geometric isomers):

- (1) Dimethoxyphenethylamine, or any compound not specifically excepted or listed in another schedule that can be formed from dimethoxyphenethylamine by replacement of one (1) or more hydrogen atoms with another atom(s), functional group(s) or substructure(s) including, but not limited to, compounds such as DOB, DOC, 2C-B, 25B-NBOMe;
- (2) Methoxyamphetamine or any compound not specifically excepted or listed in another schedule that can be formed from methoxyamphetamine

by replacement of one (1) or more hydrogen atoms with another atom(s), functional group(s) or substructure(s) including, but not limited to, compounds such as PMA and DOM;

- (3) 5-methoxy-3,4-methylenedioxy-amphetamine;
- (4) 5-methoxy-N,N-diisopropyltryptamine;
- (5) Amphetamine or methamphetamine with a halogen substitution on the benzyl ring, including compounds such as fluorinated amphetamine and fluorinated methamphetamine;
- (6) 3,4-methylenedioxy amphetamine;
- (7) 3,4-methylenedioxymethamphetamine (MDMA);
- (8) 3,4-methylenedioxy-N-ethylamphetamine (also known as N-ethyl-alpha-methyl-3,4 (methylenedioxy) phenethylamine, and N-ethyl MDA, MDE, MDEA);
- (9) N-hydroxy-3,4-methylenedioxyamphetamine (also known as N-hydroxy-alpha-methyl-3,4(methylenedioxy) phenethylamine, and N-hydroxy MDA);
- (10) 3,4,5-trimethoxy amphetamine;
- (11) 5-methoxy-N,N-dimethyltryptamine (also known as 5-methoxy-3-2[2-(dimethylamino)ethyl]indole and 5-MeO-DMT);
- (12) Alpha-ethyltryptamine (some other names: etryptamine, 3-(2-aminobutyl) indole);
- (13) Alpha-methyltryptamine;
- (14) Bufotenine;
- (15) Diethyltryptamine (DET);
- (16) Dimethyltryptamine (DMT);
- (17) Ibogaine;
- (18) Lysergic acid diethylamide;
- (19) Marihuana;
- (20) Mescaline;
- (21) Parahexyl;
- (22) Peyote;
- (23) N-ethyl-3-piperidyl benzilate;
- (24) N-methyl-3-piperidyl benzilate;
- (25) Psilocybin;
- (26) Psilocyn;
- (27) Tetrahydrocannabinols or synthetic equivalents of the substances contained in the plant, or in the resinous extractives of Cannabis, sp. and/or synthetic substances, derivatives, and their isomers with similar chemical structure such as the following:

i. Tetrahydrocannabinols:

a.  $\Delta^1$  cis or trans tetrahydrocannabinol, and their optical isomers, excluding dronabinol in sesame oil and encapsulated in a soft gelatin capsule in a drug product approved by the U.S. Food and Drug Administration.

b.  $\Delta^6$  cis or trans tetrahydrocannabinol, and their optical isomers.

c.  $\Delta^{3,4}$  cis or trans tetrahydrocannabinol, and its optical isomers. (Since nomenclature of these substances is not internationally standardized, compounds of these structures, regardless of numerical designation of atomic positions are covered.)



d. [(6aR,10aR)-9-(hydroxymethyl)-6,6-dimethyl-3-(2methyloctan-2-yl)-6a,7,10,10a-tetrahydrobenzo[c]chromen-1-ol)], also known as 6aR-trans-3-(1,1-dimethylheptyl)-6a,7,10,10a-tetrahydro-1-hydroxy-6,6-dimethyl-6H-dibenzo[b,d]pyran-9-methanol (HU-210) and its geometric isomers (HU211 or dexanabinol).

ii. The following synthetic drugs:

a. Any compound structurally derived from (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl)methanone, or (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl)methane, or (1H-indole-3-yl)(cycloalkyl, cycloalkenyl, aryl)carboxamide by substitution at the nitrogen atoms of the indole ring or carboxamide to any extent, whether or not further substituted in or on the indole ring to any extent, whether or not substituted to any extent in or on the cycloalkyl, cycloalkenyl, aryl ring(s) (substitution in the ring may include, but is not limited to, heteroatoms such as nitrogen, sulfur and oxygen).

b. Any compound structurally derived from 3-(1-naphthoyl)pyrrole by substitution at the nitrogen atom of the pyrrole ring to any extent, whether or not further substituted in the pyrrole ring to any extent, whether or not substituted in the naphthyl ring to any extent.

c. Any compound structurally derived from 1-(1-naphthylmethyl)indene by substitution at the 3-position of the indene ring to any extent, whether or not further substituted in the indene ring to any extent, whether or not substituted in the naphthyl ring to any extent.

d. Any compound structurally derived from 3-phenylacetylindole by substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent, whether or not substituted in the phenyl ring to any extent.

e. Any compound structurally derived from 2-(3-hydroxycyclohexyl)phenol by substitution at the 5-position of the phenolic ring to any extent, whether or not substituted in the cyclohexyl ring to any extent.

f. Any compound structurally derived from 3-(benzoyl)indole structure with substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent and whether or not substituted in the phenyl ring to any extent.

g. [2,3-dihydro-5-methyl-3-(4-morpholinylmethyl)pyrrolo[1,2,3-de]-1,4-benzoxazin-6-yl]-1-naphthalenylmethanone (WIN-55,212-2).

h. 3-dimethylheptyl-11-hydroxyhexahydrocannabinol (HU-243).

i. [(6S, 6aR, 9R, 10aR)-9-hydroxy-6-methyl-3-[(2R)-5-phenylpentan-2-yl]oxy-5,6,6a,7,8,9,10, 10a-octahydrophenanthridin-1-yl]acetate (CP 50,5561).

(28) Ethylamine analog of phencyclidine: N-ethyl-1-phenylcyclohexylamine (1-phenylcyclohexyl) ethylamine; N-(1-phenylcyclohexyl) ethylamine, cyclohexamine, PCE;

(29) Pyrrolidine analog of phencyclidine: 1-(phenylcyclohexyl)-pyrrolidine, PCPy, PHP;

(30) Thiophene analog of phencyclidine 1-[1-(2-thienyl)-cyclohexyl]-piperidine, 2-thienylanalog of phencyclidine, TPCP, TCP;

(31) 1-[1-(2-thienyl) cyclohexyl] pyrrolidine another name: TCPy;

(32) Spores or mycelium capable of producing mushrooms that contain psilocybin or psilocin.

(e) Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances having a depressant effect on the central nervous system, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Gamma hydroxybutyric acid (some other names include GHB; gamma-hydroxybutyrate, 4-hydroxybutyrate; 4-hydroxybutanoic acid; sodium oxybate; sodium oxybutyrate);

(2) Flunitrazepam (also known as "R2," "Rohypnol");

(3) Mecloqualone;

(4) Methaqualone.

(f) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, and salts of isomers:

(1) Aminorex (some other names: aminoxaphen, 2-amino-5-phenyl-2-oxazoline, or 4,5-dihydro-5-phenyl-2-oxazolamine);

(2) Cathinone (some other names: 2-amino-1-phenol-1-propanone, alpha-aminopropiophenone, 2-aminopropiophenone and norephedrone);

(3) Substituted cathinones. Any compound, except bupropion or compounds listed under a different schedule, structurally derived from 2-aminopropan-1-one by substitution at the 1-position with either phenyl, naphthyl or thiophene ring systems, whether or not the compound is further modified in any of the following ways:

i. By substitution in the ring system to any extent with alkyl, alkylendioxy, alkoxy, haloalkyl, hydroxyl or halide substituents, whether or not further substituted in the ring system by one (1) or more other univalent substituents;

ii. By substitution at the 3-position with an acyclic alkyl substituent;

iii. By substitution at the 2-amino nitrogen atom with alkyl, dialkyl, benzyl or methoxybenzyl groups, or by inclusion of the 2-amino nitrogen atom in a cyclic structure.

(4) Fenethylamine;

(5) Methcathinone (some other names: 2-(methyl-amino)-propionophenone, alpha-(methylamino)-propionophenone, N-methylcathinone, AL-464, AL-422, AL-463 and UR1423);

(6) (+/-)cis-4-methylaminorex [(+/-)cis-4,5-dihydro-4-methyl-5-phenyl-2-oxazolamine];

(7) N-benzylpiperazine (also known as: BZP, 1-benzylpiperazine);

(8) N-ethylamphetamine;

(9) N,N-dimethylamphetamine (also known as: N,N-alpha-trimethylbenzeneethanamine).



**History.**

I.C., § 37-2705, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 1, p. 698; am. 1980, ch. 160, § 1, p. 340; am. 1981, ch. 102, § 1, p. 149; am. 1984, ch. 160, § 1, p. 390; am. 1985, ch. 25, § 1, p. 41; am. 1986, ch. 209, § 1, p. 534; am. 1987, ch. 38, § 1, p. 61; am. 1988, ch. 190, § 1, p. 337; am. 1989, ch. 177, § 1, p.

428; am. 1995, ch. 1, § 1, p. 3; am. 1996, ch. 36, § 1, p. 90; am. 1998, ch. 160, § 1, p. 545; am. 2003, ch. 185, § 1, p. 499; am. 2004, ch. 302, § 1, p. 845; am. 2010, ch. 117, § 1, p. 243; am. 2011, ch. 46, § 1, p. 105; am. 2011, ch. 47, § 1, p. 109; am. 2011, ch. 134, § 1, p. 368; am. 2012, ch. 181, § 1, p. 472; am. 2013, ch. 253, § 1, p. 623; am. 2014, ch. 349, § 1, p. 870.

**STATUTORY NOTES****Amendments.**

The 2012 amendment, by ch. 181, added paragraph (d)(15) and redesignated the subsequent subsections accordingly; substituted "to any extent" for "by alkyl, alkenyl, cycloalkylmethyl, cycloalkylethyl or 2-(4-morpholinyl)ethyl" throughout paragraph (d)(31)(ii); and inserted "[6S, 6aR, 9R, 10aR)-" and "(2R)-" in the formula in paragraph (d)(31)(ii).

The 2013 amendment, by ch. 253, rewrote (d)(31)ii.a., which formerly read, "Any compound structurally derived from 3-(1-naphthoyl)indole or 1H-indol-3-yl-(1-naphthyl)methane by substitution at the nitrogen atom of the indole ring to any extent, whether or not further substituted in the indole ring to any extent, whether or not substituted in the naphthyl ring to any extent."

The 2014 amendment, by ch. 349, in subsection (d), deleted "(1) 4-bromo-2,5-dimethoxy amphetamine", "(2) 2,5-dimethoxyamphetamine", "(4) 2,5-dimethoxy-4-ethylamphetamine (another name: DOET)" and "(5) 2,5-dimethoxy-4-(n-propylthiophenethyl)amine" and redesignated the subsequent paragraphs accordingly, rewrote paragraph (3) (now (1)), which formerly read "(3) 4-bromo-2,5-dimethoxyphenethylamine (some other names: alpha-desmethyl DOB, 2C-B)", rewrote paragraph (3) (now (2)), which formerly read "(6) 4-methoxyamphetamine (PMA)", and rewrote paragraph (9) (now (5)), which formerly read "(9) 4-methyl-2,5-dimethoxyamphetamine (DOM, STP)".

**Effective Dates.**

Section 2 of S.L. 2013, ch. 253 declared an emergency. Approved April 3, 2013.

**37-2709. Schedule III.** — (a) Schedule III shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers, (whether optical or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Those compounds, mixtures, or preparations in dosage unit form containing any stimulant substances listed in schedule II which compounds, mixtures, or preparations were listed as excepted compounds under 21 CFR 1308.32, and any other drug of the quantitative composition shown in that list for those drugs or which is the same except that it contains a lesser quantity of controlled substances.

(2) Benzphetamine;

(3) Chlorphentermine;

(4) Clortermine;

(5) Phendimetrazine.

(c) Depressants. Unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following



substances having a potential for abuse associated with a depressant effect on the central nervous system:

- (1) Any compound, mixture or preparation containing:
  - i. Amobarbital;
  - ii. Secobarbital;
  - iii. Pentobarbital or any salt thereof and one (1) or more other active medicinal ingredients which are not listed in any schedule.
- (2) Any suppository dosage form containing:
  - i. Amobarbital;
  - ii. Secobarbital;
  - iii. Pentobarbital or any salt of any of these drugs and approved by the Food and Drug Administration for marketing only as a suppository.
- (3) Any substance which contains any quantity of a derivative of barbituric acid or any salt thereof, including, but not limited to:
  - i. Aprobarbital;
  - ii. Butabarbital (secbutabarbital);
  - iii. Butalbital;
  - iv. Butobarbital (butethal);
  - v. Talbutal;
  - vi. Thiamylal;
  - vii. Thiopental;
  - viii. Vinbarbital.
- (4) Chlorhexadol;
- (5) Embutramide;
- (6) Any drug product containing gamma hydroxybutyric acid, including its salts, isomers, and salts of isomers, for which an application is approved under section 505 of the federal food, drug, and cosmetic act;
- (7) Ketamine, its salts, isomers, and salts of isomers — 7285. (Some other names for ketamine: (+/-)-2-(2-chlorophenyl)-2-(methylamino)-cyclohexanone).
- (8) Lysergic acid;
- (9) Lysergic acid amide;
- (10) Methypylon;
- (11) Sulfondiethylmethane;
- (12) Sulfonethylmethane;
- (13) Sulfonmethane;
- (14) Tiletamine and zolazepam or any salt thereof.
- (d) Nalorphine.
- (e) Narcotic drugs. Unless specifically excepted or unless listed in another schedule:
  - (1) Any material, compound, mixture, or preparation containing limited quantities of any of the following narcotic drugs, or any salts thereof:
    - (i) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with an equal or greater quantity of an isoquinoline alkaloid of opium;
    - (ii) Not more than 1.8 grams of codeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;

- (iii) Not more than 300 milligrams of dihydrocodeinone, commonly known as hydrocodone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with a fourfold or greater quantity of an isoquinoline alkaloid of opium;
  - (iv) Not more than 300 milligrams of dihydrocodeinone, commonly known as hydrocodone, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (v) Not more than 1.8 grams of dihydrocodeine, or any of its salts, per 100 milliliters or not more than 90 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (vi) Not more than 300 milligrams of ethylmorphine, or any of its salts, per 100 milliliters or not more than 15 milligrams per dosage unit, with one (1) or more ingredients in recognized therapeutic amounts;
  - (vii) Not more than 500 milligrams of opium per 100 milliliters or per 100 grams, or not more than 25 milligrams per dosage unit, with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts;
  - (viii) Not more than 50 milligrams of morphine, or any of its salts, per 100 milliliters or per 100 grams with one (1) or more active, nonnarcotic ingredients in recognized therapeutic amounts.
- (2) Any material, compound, mixture, or preparation containing any of the following narcotic drugs or their salts, as set forth below:
- (i) Buprenorphine.
  - (ii) [Reserved].
- (f) Anabolic steroids and human growth hormones. Any drug or hormonal substance, chemically and pharmacologically related to testosterone (other than estrogens, progestins and corticosteroids) that promotes muscle growth including any salt, ester or isomer of a drug or substance listed in this paragraph, if that salt, ester or isomer promotes muscle growth.
- (1) 13beta-ethyl-17beta-hydroxygon-4-en-3-one;
  - (2) 17alpha-methyl-3alpha, 17beta-dihydroxy-5alpha-androstane;
  - (3) 17alpha-methyl-3beta, 17beta-dihydroxy-5alpha-androstane;
  - (4) 17alpha-methyl-3beta, 17beta-dihydroxyandrost-4-ene;
  - (5) 17alpha-methyl-4-hydroxynandrolone;
  - (6) 17alpha-methyl-delta1-dihydrotestosterone;
  - (7) 19-nor-4-androstenediol;
  - (8) 19-nor-4-androstenedione;
  - (9) 19-nor-4,9(10)-androstadienedione;
  - (10) 19-nor-5-androstenediol;
  - (11) 19-nor-5-androstenedione;
  - (12) 1-androstenediol;
  - (13) 1-androstenedione;
  - (14) 3alpha, 17beta-dihydroxy-5alpha-androstane;
  - (15) 3beta, 17beta-dihydroxy-5alpha-androstane;
  - (16) 4-androstenediol;
  - (17) 4-androstenedione;

- (18) 4-hydroxy-19-nortestosterone;
- (19) 4-hydroxytestosterone;
- (20) 5-androstenediol;
- (21) 5-androstenedione;
- (22) Androstenedione;
- (23) Bolasterone;
- (24) Boldenone;
- (25) Boldione;
- (26) Calusterone;
- (27) Chlorotestosterone (4-chlorotestosterone);
- (28) Clostebol;
- (29) Dehydrochlormethyltestosterone;
- (30) Delta1-dihydrotestosterone;
- (31) Desoxymethyltestosterone;
- (32) Dihydrotestosterone (4-dihydrotestosterone);
- (33) Drostanolone;
- (34) Ethylestrenol;
- (35) Fluoxymesterone;
- (36) Formebolone;
- (37) Furazabol;
- (38) Human growth hormones;
- (39) Mestanolone;
- (40) Mesterolone;
- (41) Methandienone;
- (42) Methandranone;
- (43) Methandriol;
- (44) Methandrostenolone;
- (45) Methasterone (2a, 17a-dimethyl-5a-androstan-17 $\beta$ -ol-3-one);
- (46) Methenolone;
- (47) Methyldienolone;
- (48) Methyltestosterone;
- (49) Methyltrienolone;
- (50) Mibolerone;
- (51) Nandrolone;
- (52) Norbolethone;
- (53) Norclostebol;
- (54) Norethandrolone;
- (55) Normethandrolone;
- (56) Oxandrolone;
- (57) Oxymesterone;
- (58) Oxymetholone;
- (59) Prostanazol (17 $\beta$ -hydroxy-5a-androstano[3,2-c]pyrazole);
- (60) Stanolone;
- (61) Stanozolol;
- (62) Stenbolone;
- (63) Testolactone;
- (64) Testosterone;
- (65) Testosterone cypionate;



- (66) Testosterone enanthate;
- (67) Testosterone propionate;
- (68) Tetrahydrogestrinone;
- (69) Trenbolone.

Anabolic steroids that are expressly intended for administration through implants to cattle or other nonhuman species, and that are approved by the federal Food and Drug Administration for such use, shall not be classified as controlled substances under this act and shall not be governed by its provisions.

In addition to the penalties prescribed in article IV of the uniform controlled substances act, any person shall be guilty of a felony who prescribes, dispenses, supplies, sells, delivers, manufactures or possesses with the intent to prescribe, dispense, supply, sell, deliver or manufacture anabolic steroids or any other human growth hormone for purposes of enhancing performance in an exercise, sport or game or hormonal manipulation intended to increase muscle mass, strength or weight without a medical necessity as determined by a physician.

(g) Hallucinogenic substances.

(1) Dronabinol (synthetic) in sesame oil and encapsulated in a soft gelatin capsule in the federal Food and Drug Administration approved product — 7369. (Some other names for dronabinol: (6aR-trans)-6a,7,8,10a-tetrahydro-6,6,9-trimethyl-3-pentyl-6H-dibenzo [b,d]pyran-1-ol or (-)-delta-9-(trans)-tetrahydrocannabinol).

(h) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substance, including its salts:

(1) Butorphanol.

(i) The board may except by rule any compound, mixture, or preparation containing any stimulant or depressant substance listed in subsections (b) and (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a stimulant or depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a stimulant or depressant effect on the central nervous system.

#### History.

I.C., § 37-2709, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 4, p. 261; am. 1977, ch. 234, § 3, p. 698; am. 1980, ch. 160, § 3, p. 340; am. 1982, ch. 91, § 1, p. 165; am. 1984, ch. 160, § 3, p. 390; am. 1992, ch. 24,

§ 2, p. 72; am. 1996, ch. 36, § 2, p. 90; am. 2000, ch. 110, § 2, p. 242; am. 2003, ch. 185, § 2, p. 499; am. 2006, ch. 203, § 1, p. 620; am. 2010, ch. 117, § 3, p. 243; am. 2012, ch. 181, § 2, p. 472; am. 2014, ch. 33, § 1, p. 48.

#### STATUTORY NOTES

#### Amendments.

The 2012 amendment, by ch. 181, substituted “were listed as excepted compounds under 21 CFR 1308.32” for “were listed on August 25, 1971, as excepted compounds un-

der 21 C.F.R. Sec. 308.32” in paragraph (b)(1); deleted paragraph (f)(28) “Chorionic gonadotropin;” and renumbered the subsequent paragraphs accordingly.

The 2014 amendment, by ch. 33, inserted

present paragraphs (f)(45) and (f)(59) and redesignated the subsequent paragraphs accordingly.

**37-2711. Schedule IV.** — (a) Schedule IV shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs, or their salts calculated as the free anhydrous base or alkaloid, in limited quantities as set forth below:

(1) No more than 1 milligram of difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit;

(2) Dextropropoxyphene (alpha-(+)-4-dimethylamino-1, 2-diphenyl-3-methyl-2-propionoxybutane).

(c) Depressants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers, and salts of isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

(1) Alfaxalone 5[alpha]-pregnan-3[alpha]-ol-11,20-dione;

(2) Alprazolam;

(3) Barbital;

(4) Bromazepam;

(5) Camazepam;

(6) Carisprodol;

(7) Chloral betaine;

(8) Chloral hydrate;

(9) Chlordiazepoxide;

(10) Clobazam;

(11) Clonazepam;

(12) Clorazepate;

(13) Clotiazepam;

(14) Cloxazolam;

(15) Delorazepam;

(16) Diazepam;

(17) Dichloralphenazone;

(18) Estazolam;

(19) Ethchlorvynol;

(20) Ethinamate;

(21) Ethyl loflazepate;

(22) Fludiazepam;

(23) Flurazepam;

(24) Halazepam;

(25) Haloxazolam;

(26) Ketazolam;

(27) Loprazolam;

(28) Lorazepam;

(29) Lormetazepam;

- (30) Mebutamate;
- (31) Medazepam;
- (32) Meprobamate;
- (33) Methohexital;
- (34) Methylphenobarbital (mephobarbital);
- (35) Midazolam;
- (36) Nimetazepam;
- (37) Nitrazepam;
- (38) Nordiazepam;
- (39) Oxazepam;
- (40) Oxazolam;
- (41) Paraldehyde;
- (42) Petrichloral;
- (43) Phenobarbital;
- (44) Pinazepam;
- (45) Prazepam;
- (46) Temazepam;
- (47) Tetrazepam;
- (48) Triazolam;
- (49) Quazepam;
- (50) Zaleplon;
- (51) Zolpidem;
- (52) Zopiclone.

(d) Fenfluramine — Any material, compound, mixture, or preparation which contains any quantity of the following substances, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers, whenever the existence of such salts, isomers, and salts of isomers is possible:

- (1) Dexfenfluramine;
- (2) Fenfluramine.

(e) Stimulants. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation which contains any quantity of the following substances having a stimulant effect on the central nervous system, including its salts, isomers (whether optical, position, or geometric), and salts of such isomers whenever the existence of such salts, isomers, and salts of isomers is possible within the specific chemical designation:

- (1) Cathine ((+)-norpseudoephedrine);
- (2) Diethylpropion;
- (3) Fencamfamin;
- (4) Fenproporex;
- (5) Lorcaserin;
- (6) Mazindol;
- (7) Mefenorex;
- (8) Modafinil;
- (9) Pemoline (including organometallic complexes and chelates thereof);
- (10) Phentermine;
- (11) Pipradrol;



(12) Sibutramine;

(13) SPA ((-)-1-dimethylamino-1,2-diphenylethane).

(f) Other substances. Unless specifically excepted, or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Pentazocine;

(2) Fospropofol.

(g) The board may except by rule any compound, mixture, or preparation containing any depressant substance listed in subsection (c) of this section from the application of all or any part of this act if the compound, mixture, or preparation contains one (1) or more active medicinal ingredients not having a depressant effect on the central nervous system, and if the admixtures are included therein in combinations, quantity, proportion, or concentration that vitiate the potential for abuse of the substances which have a depressant effect on the central nervous system.

#### History.

I.C., § 37-2711, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 4, p. 698; am. 1980, ch. 160, § 4, p. 340; am. 1981, ch. 102, § 3, p. 149; am. 1982, ch. 91, § 2, p. 165; am. 1984, ch. 160, § 4, p. 390; am. 1986, ch. 209, § 3, p. 534; am. 1988, ch. 190, § 3, p. 337; am.

1989, ch. 177, § 3, p. 428; am. 1989, ch. 197, § 1, p. 493; am. 1992, ch. 24, § 3, p. 72; am. 1996, ch. 36, § 3, p. 90; am. 1999, ch. 67, § 1, p. 177; am. 2010, ch. 117, § 4, p. 243; am. 2012, ch. 181, § 3, p. 472; am. 2014, ch. 33, § 2, p. 48.

#### STATUTORY NOTES

#### Amendments.

The 2012 amendment, by ch. 181, added paragraph (c)(5) and renumbered the subsequent paragraphs accordingly.

The 2014 amendment, by ch. 33, inserted present paragraphs (c)(1) and (e)(5) and redesignated the subsequent paragraphs accordingly.

**37-2713. Schedule V.** — (a) Schedule V shall consist of the drugs and other substances, by whatever official name, common or usual name, chemical name, or brand name designated, listed in this section.

(b) Narcotic drugs. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture, or preparation containing any of the following narcotic drugs and their salts, as set forth below.

(c) Narcotic drugs containing nonnarcotic active medicinal ingredients. Any compound, mixture, or preparation containing any of the following limited quantities of narcotic drugs or salts thereof, which shall include one (1) or more nonnarcotic active medicinal ingredients in sufficient proportion to confer upon the compound, mixture, or preparation, valuable medicinal qualities other than those possessed by the narcotic drug alone:

(1) Not more than 200 milligrams of codeine per 100 milliliters or per 100 grams;

(2) Not more than 100 milligrams of dihydrocodeine per 100 milliliters or per 100 grams;

(3) Not more than 100 milligrams of ethylmorphine per 100 milliliters or per 100 grams;

(4) Not more than 2.5 milligrams of diphenoxylate and not less than 25 micrograms of atropine sulfate per dosage unit;

(5) Not more than 100 milligrams of opium per 100 milliliters or per 100 grams;

(6) Not more than 0.5 milligrams difenoxin and not less than 25 micrograms of atropine sulfate per dosage unit.

(d) Other substances. Unless specifically excepted or unless listed in another schedule, any material, compound, mixture or preparation which contains any quantity of the following substances, including its salts:

(1) Ezogabine [N-[2-amino-4-(4-fluorobenzylamino)-phenyl]-carbamic acid ethyl ester]-2779;

(2) Lacosamide;

(3) Pregabalin;

(4) Propylhexedrine (except as Benzedrex<sup>™</sup> inhaler);

(5) Pyrovalerone.

#### History.

I.C., § 37-2713, as added by 1971, ch. 215, § 1, p. 939; am. 1977, ch. 234, § 5, p. 698; am. 1980, ch. 160, § 5, p. 340; am. 1984, ch. 160, § 5, p. 390; am. 1986, ch. 209, § 4, p. 534; am.

1989, ch. 177, § 4, p. 428; am. 1990, ch. 29, § 1, p. 44; am. 2003, ch. 185, § 3, p. 499; am. 2010, ch. 117, § 5, p. 243; am. 2012, ch. 181, § 4, p. 472.

#### STATUTORY NOTES

#### Amendments.

The 2012 amendment, by ch. 181, added

paragraph (d)(1) and renumbered the subsequent paragraphs accordingly.

### Article III

**37-2716. Registration requirements.** — (a) Every person who manufactures, distributes, or dispenses any controlled substance within this state or who proposes to engage in the manufacture, distribution, or dispensing of any controlled substance within this state, must obtain annually a registration issued by the board in accordance with its rules. A copy of each registration issued shall be transmitted by the board to the director of the Idaho state police.

(b) Every prescriber, except veterinarians, must annually register with the board to obtain online access to the controlled substances prescriptions database. Such registration shall be completed upon renewal for existing controlled substance registrants and at the time of registration for first-time registrants.

(c) Persons registered by the board under this chapter to manufacture, distribute, dispense, or conduct research with controlled substances may possess, manufacture, distribute, dispense, or conduct research with those substances to the extent authorized by their registration and in conformity with the other provisions of this article.

(d) The following persons need not register and may lawfully possess controlled substances under this chapter:

(1) An agent or employee of any registered manufacturer, distributor, or dispenser of any controlled substance if he is acting in the usual course of his business or employment;

(2) A common or contract carrier or warehouseman, or an employee

thereof, whose possession of any controlled substance is in the usual course of business or employment;

(3) An ultimate user or a person in possession of any controlled substance pursuant to a lawful order of a practitioner or in lawful possession of a schedule V substance.

(e) The board may waive by rule the requirement for registration of certain manufacturers, distributors, or dispensers if it finds it consistent with the public health and safety.

(f) A separate registration is required at each principal place of business or professional practice where the applicant manufactures, distributes, or dispenses controlled substances.

(g) The board may inspect the establishment of a registrant or applicant for registration in accordance with the board rule.

**History.**

I.C., § 37-2716, as added by 1971, ch. 215,  
§ 1, p. 939; am. 1974, ch. 27, § 79, p. 811; am.

2000, ch. 469, § 85, p. 1450; am. 2014, ch. 79,  
§ 2, p. 211.

**STATUTORY NOTES**

**Amendments.**

The 2014 amendment, by ch. 79, inserted  
present subsection (b) and redesignated the

subsequent subsections accordingly and substituted “this chapter” for “this act” in present subsections (c) and (d).

**37-2726. Filing prescriptions — Database.** — (1) All controlled substances dispensed for humans shall be filed with the board electronically in a format established by the board or by other method as required by board rule. The board may require the filing of other prescriptions by board rule. The board shall establish by rule the information to be submitted pursuant to the purposes of this section and the purposes set forth in section 37-2730A, Idaho Code.

(2) The board shall create, operate and maintain a controlled substances prescriptions database containing the information submitted pursuant to subsection (1) of this section, to be used for the purposes and subject to the terms, conditions and immunities described in section 37-2730A, Idaho Code. The database information must be made available only to the following:

(a) Authorized individuals employed by Idaho’s boards or other states’ licensing entities charged with the licensing and discipline of practitioners;

(b) Peace officers employed by federal, state and local law enforcement agencies engaged as a specified duty of their employment in enforcing law regulating controlled substances;

(c) Authorized individuals under the direction of the department of health and welfare for the purpose of monitoring and enforcing that department’s responsibilities under the public health, medicare and medicaid laws;

(d) A practitioner, licensed in Idaho or another state, having authority to prescribe controlled substances, to the extent the information relates



specifically to a current patient of the practitioner to whom the practitioner is prescribing or considering prescribing any controlled substance;

(e) A pharmacist, licensed in Idaho or another state, having authority to dispense controlled substances to the extent the information relates specifically to a current patient to whom that pharmacist is dispensing or considering dispensing any controlled substance, or providing pharmaceutical care as defined in the Idaho pharmacy act;

(f) An individual who is the recipient of a dispensed controlled substance entered into the database may access records that pertain to that individual, upon the production of positive identification, or that individual's designee upon production of a notarized release of information by that individual;

(g) Upon the lawful order of a court of competent jurisdiction; and

(h) Prosecuting attorneys, deputy prosecuting attorneys and special prosecutors of a county or city and special assistant attorneys general from the office of the attorney general engaged in enforcing law regulating controlled substances.

(3) The board shall require prescribers, except veterinarians, to annually register with the board to obtain online access to the controlled substances prescriptions database.

(4) The board must maintain records on the information disclosed from the database, including:

(a) The identification of each individual who requests or receives information from the database and who that individual represents;

(b) The information provided to each such individual; and

(c) The date and time the information is requested or provided.

(5) The board shall promulgate rules to ensure that only authorized individuals have access to the database.

(6) Any person who knowingly misrepresents to the board that he is a person entitled under subsection (2) of this section to receive information from the controlled substances prescriptions database under the conditions therein provided, and who receives information from the controlled substances prescriptions database resulting from that misrepresentation, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

(7) Any person in possession, whether lawfully or unlawfully, of information from the controlled substances prescriptions database which identifies an individual patient and who knowingly discloses such information to a person not authorized to receive or use such information under any state or federal law, rule or regulation; the lawful order of a court of competent jurisdiction; or written authorization of the individual patient shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months, or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law. The

provisions of this subsection shall not apply to disclosure of individual patient information by the patient himself. The provisions of this subsection shall not apply to disclosure of information by a prosecuting attorney, deputy prosecuting attorney or special prosecutor of a county or city or by a special assistant attorney general from the office of the attorney general in the course of a criminal proceeding, whether preconviction or postconviction.

(8) Any person with access to the board's online prescription monitoring program pursuant to a board issued user account, login name and password who intentionally shares or recklessly fails to safeguard his user account, login name and password, resulting in another person not authorized to receive or use such information under the provisions of any state or federal law, rule or regulation obtaining information from the controlled substances prescriptions database, shall be guilty of a misdemeanor, punishable by imprisonment in a county jail not to exceed six (6) months or by a fine not to exceed two thousand dollars (\$2,000), or both. The foregoing criminal penalty is in addition to, and not in lieu of, any other civil or administrative penalty or sanction authorized by law.

(9) The board may, at its discretion, block access to certain controlled substances prescriptions database data if the board has reason to believe that access to the data is or may be used illegally.

(10) All costs associated with recording and submitting data as required in this section are assumed by the dispensing practitioner recording and submitting the data.

#### History.

I.C. § 37-2726, as added by 2001, ch. 178, § 5, p. 601; am. 2006, ch. 175, § 2, p. 535; am. 2008, ch. 129, § 1, p. 362; am. 2012, ch. 185,

§ 1, p. 489; am. 2012, ch. 198, § 1, p. 531; am. 2014, ch. 32, § 1, p. 46; am. 2014, ch. 79, § 3, p. 211.

#### STATUTORY NOTES

#### Amendments.

This section was amended by two 2012 acts which appear to be compatible and have been compiled together.

The 2012 amendment, by ch. 185, substituted "dispensed for humans" for "prescriptions" in the first sentence in subsection (1).

The 2012 amendment, by ch. 198, in subsection (2), substituted "employed by Idaho's boards or other states' licensing entities charged with" for "employed by the boards responsible for conducting investigations related to" in paragraph (2)(a); substituted "practitioner, licensed in Idaho or another state" for "licensed practitioner" near the beginning of paragraph (2)(a); substituted "pharmacist, licensed in Idaho or another state" for "licensed pharmacist" and added "or providing pharmaceutical care as defined in the Idaho pharmacy act" in paragraph (2)(e);

added subsections (7) and (8); renumbered former subsection (7) as subsection (9); and deleted former subsection (8), which read, "The definitions set forth in section 37-2701, Idaho Code, shall apply to this section."

This section was amended by two 2014 acts which appear to be compatible and have been compiled together.

The 2014 amendment, by ch. 32, rewrote paragraph (2)(f), which formerly read: "An individual who is the recipient of a dispensed controlled substance prescription entered into the database or that individual's attorney, upon providing evidence satisfactory to the board that the individual requesting the information is in fact the person about whom the data entry was made or the attorney for that person".

The 2014 amendment, by ch. 79, inserted present subsection (3) and redesignated the subsequent subsections accordingly.

**37-2730A. Prescription tracking program.** — (1) The board shall



maintain a program to track the prescriptions for controlled substances that are filed with the board under section 37-2726, Idaho Code, for the purpose of assisting in identifying illegal activity related to the dispensing of controlled substances and for the purpose of assisting the board in providing information to patients, practitioners and pharmacists to assist in avoiding inappropriate use of controlled substances. The tracking program and any data created thereby shall be administered by the board.

(2) The board shall use the information obtained through the tracking program in identifying activity it reasonably suspects may be in violation of this chapter or medical assistance law. The board shall report this information to the individuals and persons set forth in section 37-2726(2), Idaho Code. The board may release unsolicited information to pharmacists and practitioners when the release of information may be of assistance in preventing or avoiding inappropriate use of controlled substances. The board may provide the appropriate law enforcement agency, medicaid or medicare agency or licensing board with the relevant information in the board's possession, including information obtained from the tracking program, for further investigation, or other appropriate law enforcement or administrative enforcement use.

(3) Information, which does not identify individual patients, practitioners or dispensing pharmacists or pharmacies, may be released by the board for educational, research or public information purposes.

(4) Nothing herein shall prevent a pharmacist or practitioner from furnishing another pharmacist or practitioner information obtained pursuant to and in compliance with this chapter.

(5) Unless there is shown malice or criminal intent or gross negligence or reckless, willful and wanton conduct as defined in section 6-904C, Idaho Code, the state of Idaho, the board, any other state agency, or any person, or entity in proper possession of information as herein provided shall not be subject to any liability or action for money damages or other legal or equitable relief by reason of any of the following:

- (a) The furnishing of information under the conditions herein provided;
- (b) The receiving and use of, or reliance on, such information;
- (c) The fact that any such information was not furnished; or
- (d) The fact that such information was factually incorrect or was released by the board to the wrong person or entity.

(6) The board may apply for any available grants and accept any gifts, grants or donations to assist in developing and maintaining the program required by this section.

**History.**

I.C., § 37-2730A, as added by 2000, ch. 194, § 1, p. 479; am. 2001, ch. 178, § 6, p. 601; am.

2006, ch. 175, § 3, p. 535; am. 2012, ch. 198, § 2, p. 531; am. 2013, ch. 6, § 1, p. 14.



## STATUTORY NOTES

**Amendments.**

The 2012 amendment, by ch. 198, inserted the third sentence in subsection (2).

The 2013 amendment, by ch. 6, added pres-

ent subsection (4) and redesignated former subsections (4) and (5) as present subsections (5) and (6).

## Article IV

**37-2732. Prohibited acts A — Penalties.**

## JUDICIAL DECISIONS

## ANALYSIS

Exercise of religion.  
Restitution.

**Exercise of Religion.**

Prosecution of defendant who claimed that he was an ordained minister and that he provided marijuana to be smoked by his friends as a sacrament did not violate his right to the free exercise of religion under the state and federal constitutions. This section is a statute of general application and it does not proscribe any conduct because it is engaged in for religious reasons or because of the religious belief it portrays. It is entirely neutral with respect to religion. *State v. Fluewelling*, 150 Idaho 576, 249 P.3d 375 (2011).

**Restitution.**

A reasonable reading of subsection (k) includes costs incurred for law enforcement employees' attendance at a restitution hearing and the costs of their investigation. *State v. Mosqueda*, 150 Idaho 830, 252 P.3d 563 (Ct. App. 2010).

Under § 19-5304, the court properly entered a civil judgment for restitution against a defendant who agreed to plead guilty to two counts of trafficking in cocaine and one count

of conspiracy to traffic in cocaine, even though there was no mention of restitution in the plea agreement. *State v. Gomez*, 153 Idaho 253, 281 P.3d 90 (2012).

Because the dismissal of a felony conviction became final after the expiration of the time for appeal or affirmance of the dismissal on appeal, a district court's jurisdiction to amend the order expired at that time. Jurisdiction was not extended for a motion, seeking reimbursement for restitution already paid to the court, that was filed 10 months after the dismissal. Even assuming the district court had subject matter jurisdiction, it lacked personal jurisdiction over the nonparty agencies that collected, disbursed, or retained the monies paid. *State v. Peterson*, 153 Idaho 157, 280 P.3d 184 (Ct. App. 2012).

**Cited in:** *State v. Turek*, 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011); *State v. Johnson*, 152 Idaho 56, 266 P.3d 1161 (Ct. App. 2011); *State v. Betancourt*, 151 Idaho 635, 262 P.3d 278 (Ct. App. 2011); *State v. Kessler*, 151 Idaho 653, 262 P.3d 682 (Ct. App. 2011); *Hoffman v. State*, 153 Idaho 898, 277 P.3d 1050 (Ct. App. 2012).

## RESEARCH REFERENCES

**A.L.R.** — Availability of defense of duress or coercion in prosecution for violation of federal narcotics laws. 71 A.L.R. Fed. 2d 481.

**37-2732B. Trafficking — Mandatory sentences.****JUDICIAL DECISIONS****ANALYSIS**

Enhanced sentence.

Sentence upheld.

**Enhanced Sentence.**

The plain language of paragraph (7) clearly demonstrates that, if it is established at the time of sentencing that the conviction for which the defendant is being sentenced is the second trafficking conviction for the defendant, the sentencing court shall apply a mandatory minimum fixed term that is twice what is otherwise required. The plain language does not require that the arrest for the second trafficking offense occur after a defendant's first trafficking conviction. *State v. Beavers*, 152 Idaho 180, 268 P.3d 1 (Ct. App. 2010).

**Sentence Upheld.**

Defendant's 10-year sentence, with a minimum period of confinement of three years, for trafficking in methamphetamine was appropriate. Although sentence was for a first time felony, it fell well within the minimum of three years and the maximum of life mandated by the provisions of this section for trafficking. *State v. Dewitt*, 153 Idaho 658, 289 P.3d 60 (Ct. App. 2012).

**Cited in:** *State v. Johnson*, 152 Idaho 56, 266 P.3d 1161 (Ct. App. 2011).

**RESEARCH REFERENCES**

**A.L.R.** — Availability of defense of duress or coercion in prosecution for violation of federal narcotics laws. 71 A.L.R. Fed. 2d 481.

**37-2734. Prohibited acts C — Penalties.****JUDICIAL DECISIONS**

**Cited in:** *State v. Summers*, 152 Idaho 35, 266 P.3d 510 (Ct. App. 2011).

**37-2734A. Prohibited acts D — Penalties.****JUDICIAL DECISIONS**

**Cited in:** *State v. Turek*, 150 Idaho 745, 250 P.3d 796 (Ct. App. 2011); *State v. Johnson*, 152 Idaho 56, 266 P.3d 1161 (Ct. App. 2011).

**37-2738. Sentencing criteria in drug cases.****JUDICIAL DECISIONS****Community Service.**

Subsection (5) requires a person convicted of possession of a controlled substance to complete a minimum one hundred hours of community service. Under Idaho Const., Art.

V, § 13, a magistrate may not suspend any hours of that community service below the statutory minimum. *State v. Garcia-Pineda*, 154 Idaho 482, 299 P.3d 794 (Ct. App. 2013).

**37-2739A. Mandatory minimum penalty.****JUDICIAL DECISIONS****Admission.**

To be used to enhance a sentence under this section, an admission to an earlier, qualifying offense must be voluntary; that is, it made

must be made with a full understanding of the consequences. *State v. Beavers*, 152 Idaho 180, 268 P.3d 1 (Ct. App. 2010).

**Article V****37-2744. Forfeitures.** — (a) The following are subject to forfeiture:

(1) All controlled substances which have been manufactured, distributed, dispensed, acquired, possessed or held in violation of this act or with respect to which there has been any act by any person in violation of this act;

(2) All raw materials, products and equipment of any kind which are used, or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substances or counterfeit substances in violation of this act;

(3) All property which is used, or intended for use, as a container for property described in paragraph (1) or (2) of this section;

(4) All conveyances, including aircraft, vehicles, or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, delivery, receipt, possession or concealment, for the purpose of distribution or receipt of property described in paragraph (1) or (2) of this section, but:

(A) No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this act;

(B) No conveyance is subject to forfeiture under this section if the owner establishes that he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section;

(C) A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if the security interest was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged.

(5) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this act.

(6)(A) All moneys, currency, negotiable instruments, securities or other items easily liquidated for cash, such as, but not limited to, jewelry, stocks and bonds, or other property described in paragraphs (2) and (3) hereof, found in close proximity to property described in paragraph (1),



(2), (3), (5), (7) or (8) of subsection (a) of this section or which has been used or intended for use in connection with the illegal manufacture, distribution, dispensing or possession of property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section;

(B) Items described in paragraph (6)(A) of this subsection or other things of value furnished or intended to be furnished by any person in exchange for a contraband controlled substance in violation of this chapter, all proceeds, including items of property traceable to such an exchange, and all moneys or other things of value used or intended to be used to facilitate any violation of this chapter, except that no property shall be forfeited under this paragraph to the extent of the interest of an owner, by reason of any act or omission established by that owner to have been committed or omitted without the knowledge or consent of that owner.

(7) All drug paraphernalia as defined by section 37-2701, Idaho Code.

(8) All simulated controlled substances, which are used or intended for use in violation of this chapter.

(9) All weapons, or firearms, which are used in any manner to facilitate a violation of the provisions of this chapter.

(b) Property subject to forfeiture under this chapter may be seized by the director, or any peace officer of this state, upon process issued by any district court, or magistrate's division thereof, having jurisdiction over the property. Seizure without process may be made if:

(1) The seizure is incident to an arrest or a search under a search warrant or an inspection under an administrative inspection warrant;

(2) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal racketeering or civil forfeiture proceeding based upon a violation of this chapter;

(3) Probable cause exists to believe that the property is directly or indirectly dangerous to health or safety; or

(4) Probable cause exists to believe that the property was used or is intended to be used in violation of this chapter.

(c) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted promptly.

(1) When property is seized under this section, the director or the peace officer who seized the property may:

(A) Place the property under seal;

(B) Remove the property to a place designated by it; or

(C) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(2) The peace officer who seized the property shall within five (5) days notify the director of such seizure.

(3) In the event of seizure pursuant to subsection (b) of this section, proceedings under subsection (d) of this section shall be instituted within thirty (30) days by the director or appropriate prosecuting attorney.

(d) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the director, or appropriate prosecuting attorney, subject only to the orders and decrees of the district

court, or magistrate's division thereof, having jurisdiction over the forfeiture proceedings. Forfeiture proceedings shall be civil actions against the property subject to forfeiture and the standard of proof shall be preponderance of the evidence.

(1) All property described in paragraphs (1), (7) and (8) of subsection (a) of this section shall be deemed contraband and shall be summarily forfeited to the state. Controlled substances which are seized or come into possession of the state, the owners of which are unknown, shall be deemed contraband and shall be summarily forfeited to the state.

(2) When property described in paragraphs (2), (3), (4), (5) and (6) of subsection (a) of this section is seized pursuant to this section, forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such property is seized. The procedure governing such proceedings shall be the same as that prescribed for civil proceedings by the Idaho rules of civil procedure. The court shall order the property forfeited to the director, or appropriate prosecuting attorney, if he determines that such property was used, or intended for use, in violation of this chapter, or, in the case of items described in paragraph (6)(A) of subsection (a), was found in close proximity to property described in paragraph (1), (2), (3), (5), (7) or (8) of subsection (a) of this section.

(3) When conveyances, including aircraft, vehicles, or vessels are seized pursuant to this section a complaint instituting forfeiture proceedings shall be filed in the office of the clerk of the district court for the county wherein such conveyance is seized.

(A) Notice of forfeiture proceedings shall be given each owner or party in interest who has a right, title, or interest which in the case of a conveyance shall be determined by the record in the Idaho transportation department or a similar department of another state if the records are maintained in that state, by serving a copy of the complaint and summons according to one (1) of the following methods:

(I) Upon each owner or party in interest by mailing a copy of the complaint and summons by certified mail to the address as given upon the records of the appropriate department.

(II) Upon each owner or party in interest whose name and address is known, by mailing a copy of the notice by registered mail to the last known address.

(B) Within twenty (20) days after the mailing or publication of the notice, the owner of the conveyance or claimant may file a verified answer and claim to the property described in the complaint instituting forfeiture proceedings.

(C) If at the end of twenty (20) days after the notice has been mailed there is no verified answer on file, the court shall hear evidence upon the fact of the unlawful use, or intent to use, and shall order the property forfeited to the director, or appropriate prosecuting attorney, if such fact is proved.

(D) If a verified answer is filed, the forfeiture proceeding shall be set for hearing before the court without a jury on a day not less than thirty (30) days therefrom; and the proceeding shall have priority over other civil cases.



(I) At the hearing any owner who has a verified answer on file may show by competent evidence that the conveyance was not used or intended to be used in any manner described in subsection (a)(4) of this section.

(II) At the hearing any owner who has a verified answer on file may show by competent evidence that his interest in the conveyance is not subject to forfeiture because he could not have known in the exercise of reasonable diligence that the conveyance was being used, had been used, was intended to be used or had been intended to be used in any manner described in subsection (a)(4) of this section.

(III) If the court finds that the property was not used or was not intended to be used in violation of this act, or is not subject to forfeiture under this act, the court shall order the property released to the owner as his right, title, or interest appears on records in the appropriate department as of the seizure.

(IV) An owner, co-owner or claimant of any right, title, or interest in the conveyance may prove that his right, title, or interest, whether under a lien, mortgage, conditional sales contract or otherwise, was created without any knowledge or reason to believe that the conveyance was being used, had been used, was intended to be used, or had been intended to be used for the purpose alleged;

(i) In the event of such proof, the court shall order the conveyance released to the bona fide or innocent owner, purchaser, lienholder, mortgagee, or conditional sales vendor. The court may order payment of all costs incurred by the state or law enforcement agency as a result of such seizure.

(ii) If the amount due to such person is less than the value of the conveyance, the conveyance may be sold at public auction by the director or appropriate prosecuting attorney. The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the conveyance. The proceeds from such sale shall be distributed as follows in the order indicated:

1. To the bona fide or innocent owner, purchaser, conditional sales vendor, lienholder or mortgagee of the conveyance, if any, up to the value of his interest in the conveyance.

2. The balance, if any, in the following order:

A. To the director, or appropriate prosecuting attorney, for all expenditures made or incurred by it in connection with the sale, including expenditure for any necessary repairs, storage, or transportation of the conveyance, and for all expenditures made or incurred by him in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

B. To the law enforcement agency of this state which seized the conveyance for all expenditures for traveling, investiga-



tion, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any conveyance seized under this act.

C. The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local drug enforcement donation fund, or its equivalent.

(iii) In any case, the director, or appropriate prosecuting attorney, may, within thirty (30) days after judgment, pay the balance due to the bona fide lienholder, mortgagee or conditional sales vendor and thereby purchase the conveyance for use to enforce this act.

(e) When property is forfeited under this section, or is received from a federal enforcement agency, the director, or appropriate prosecuting attorney, may:

(1) Retain it for official use;

(2) Sell that which is not required to be destroyed by law and which is not harmful to the public.

The director, or appropriate prosecuting attorney, shall publish a notice of the sale by at least one (1) publication in a newspaper published and circulated in the city, community or locality where the sale is to take place at least one (1) week prior to sale of the property. The proceeds from such sale shall be distributed as follows in the order indicated:

(A) To the director, or prosecuting attorney on behalf of the county or city law enforcement agency, for all expenditures made or incurred in connection with the sale, including expenditure for any necessary repairs, maintenance, storage or transportation, and for all expenditures made or incurred in connection with the forfeiture proceedings including, but not limited to, expenditures for witnesses' fees, reporters' fees, transcripts, printing, traveling and investigation.

(B) To the law enforcement agency of this state which seized the property for all expenditures for traveling, investigation, storage and other expenses made or incurred after the seizure and in connection with the forfeiture of any property seized under this act.

(C) The remainder, if any, to the director for credit to the drug and driving while under the influence enforcement donation fund or to the appropriate prosecuting attorney for credit to the local agency's drug enforcement donation fund; or

(3) Take custody of the property and remove it for disposition in accordance with law.

(f)(1) The director or any peace officer of this state seizing any of the property described in paragraphs (1) and (2) of subsection (a) of this section shall cause a written inventory to be made and maintain custody of the same until all legal actions have been exhausted unless such property has been placed in lawful custody of a court or state or federal law enforcement agency. After all legal actions have been exhausted with respect to such property, the property shall be surrendered by the court, law enforcement agency, or person having custody of the same to the director to be destroyed pursuant to paragraph (2) of this subsection. The

property shall be accompanied with a written inventory on forms furnished by the director.

(2) All property described in paragraphs (1) and (2) of subsection (a) which is seized or surrendered under the provisions of this act may be destroyed after all legal actions have been exhausted. The destruction shall be done under the supervision of the Idaho state police by a representative of the office of the director and a representative of the state board of pharmacy. An official record listing the property destroyed and the location of destruction shall be kept on file at the office of the director. Except, however, that the director of the Idaho state police or his designee may authorize the destruction of drug or nondrug evidence, or store those items at government expense when, in the opinion of the director or his designee, it is not reasonable to remove or transport such items from the location of the seizure for destruction. In such case, a representative sample will be removed and preserved for evidentiary purposes and, when practicable, destroyed as otherwise is in accordance with this chapter. On-site destruction of such items shall be witnessed by at least two (2) persons, one (1) of whom shall be the director or his designee who shall make a record of the destruction.

(g) Species of plants from which controlled substances in schedules I and II may be derived which have been planted or cultivated in violation of this act, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily forfeited to the state.

(h) The failure, upon demand by the director, or his duly authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate registration, or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(i) The director shall have the authority to enter upon any land or into any dwelling pursuant to a search warrant, to cut, harvest, carry off or destroy such plants described in subsection (g) of this section.

#### History.

I.C., § 37-2744, as added by 1971, ch. 215, § 1, p. 939; am. 1972, ch. 133, § 11, p. 261; am. 1972, ch. 409, § 4, p. 1195; am. 1974, ch. 27, § 82, p. 811; am. 1980, ch. 388, § 4, p. 977; am. 1982, ch. 265, § 1, p. 680; am. 1983, ch. 218, § 3, p. 599; am. 1986, ch. 286, § 2, p.

709; am. 1988, ch. 47, § 3, p. 54; am. 1990, ch. 239, § 1, p. 676; am. 1990, ch. 312, § 1, p. 852; am. 1992, ch. 174, § 1, p. 546; am. 1994, ch. 285, § 1, p. 893; am. 1994, ch. 286, § 1, p. 893; am. 1999, ch. 218, § 1, p. 578; am. 2000, ch. 469, § 89, p. 1450; am. 2009, ch. 108, § 5, p. 344; am. 2014, ch. 78, § 1, p. 205.

#### STATUTORY NOTES

##### Amendments.

The 2014 amendment, by ch. 78, substituted "Idaho state police by a representative"

for "supervisory drug analyst of the Idaho state police, a representative" in the second sentence in paragraph (f)(2).

#### JUDICIAL DECISIONS

##### Construction.

In a civil forfeiture action, the state must prove that the vehicle at issue was involved the "distribution or receipt" of controlled sub-

stances and must prove that element by a preponderance of the evidence. *Ada County Prosecuting Atty. v. 2007 Legendary Motorcycle*, 154 Idaho 351, 298 P.3d 245 (2013).

## CHAPTER 32

### LEGEND DRUG CODE IMPRINT

#### SECTION.

37-3201. Definitions.

**37-3201. Definitions.** — As used in this chapter:

(1) “Code imprint” means a series of letters or numbers assigned by the manufacturer or distributor to a specific drug, or marks or monograms unique to the manufacturer or distributor of the drug, or both;

(2) “Distributor” means a person who distributes for resale a drug in solid dosage form under his own label even though he is not the actual manufacturer of the drug;

(3) “Solid dosage form” means capsules or tablets intended for oral use;

(4) “Legend drug” means any drug defined by section 54-1705(36), Idaho Code.

#### History.

I.C., § 37-3201, as added by 1981, ch. 41, § 1, p. 63; am. 2002, ch. 26, § 3, p. 29; am. 2002, ch. 69, § 1, p. 155; am. 2006, ch. 290,

§ 3, p. 888; am. 2009, ch. 244, § 1, p. 748; am. 2011, ch. 135, § 1, p. 375; am. 2013, ch. 28, § 1, p. 52; am. 2013, ch. 270, § 4, p. 698; am. 2014, ch. 146, § 6, p. 391.

#### STATUTORY NOTES

#### Amendments.

This section was amended by two 2013 acts which appear to be compatible and have been compiled together.

The 2013 amendments, by chs. 28 and 270,

updated the reference in subsection (4) to reflect the 2013 amendment of § 54-1705.

The 2014 amendment, by ch. 146, updated a reference in subsection (4) in light of the 2014 amendment of § 54-1705.

## CHAPTER 33

### RETAIL SALES OF PSEUDOEPHEDRINE PRODUCTS

#### SECTION.

37-3303. Limitations on sales and purchases.

#### SECTION.

37-3303A. Electronic tracking system.

**37-3303. Limitations on sales and purchases.** — (1) It shall be unlawful for any retailer to knowingly sell, transfer or otherwise furnish in a single day a pseudoephedrine product or products containing more than a base amount of three and six-tenths (3.6) grams of pseudoephedrine.

(2) It shall be unlawful for any person to knowingly purchase from a retailer more than the daily sales limit of a pseudoephedrine product or products containing a base amount of three and six-tenths (3.6) grams per purchaser or more than a base amount of nine (9) grams of pseudoephedrine in a single thirty (30) day period, regardless of the number of transactions.

(3) The retailer shall not sell the pseudoephedrine product unless the purchaser presents a photographic identification card issued by a state or by the federal government.

(4)(a) A retailer shall, before completing a sale under the provisions of this section, submit the required information to the electronic sales



tracking system established under section 37-3303A, Idaho Code, as long as such a system is available without charge to the retailer for accessing the system. The retailer may not complete the sale if the system generates a stop sale alert, except as permitted in section 37-3303A, Idaho Code.

(b) If a retailer selling a nonprescription pseudoephedrine product experiences mechanical or electronic failure of the electronic sales tracking system and is unable to comply with the electronic sales tracking requirement, he or she shall make available for inspection by any law enforcement officer or board inspector during normal business hours the logbook required by the federal combat methamphetamine epidemic act of 2005 until such time as he or she is able to comply with the electronic sales tracking requirement.

(c) A retailer selling a nonprescription pseudoephedrine product may seek an exemption from submitting transactions to the electronic sales tracking system in writing to the board of pharmacy stating the reasons for the exemption. The board may grant an exemption for good cause shown, but in no event shall a granted exemption exceed one hundred eighty (180) days. The board may grant multiple exemptions for any retailer if the good cause shown indicates significant hardship for compliance with this section. A retailer that receives an exemption shall make available for inspection by any law enforcement officer or board inspector during normal business hours the logbook required by the federal combat methamphetamine epidemic act of 2005. For purposes of this subsection, "good cause" includes, but is not limited to, situations where the installation of the necessary equipment to access the system is unavailable or cost prohibitive to the retailer.

(d) A retailer may withdraw from participating in the electronic sales tracking system if the system is no longer being furnished without charge for accessing the system. A retailer who withdraws from the electronic sales tracking system is subject to the same requirements as a retailer who has been granted an exemption under subsection (c) of this section.

(e) For the purposes of subsection (4) of this section and section 37-3303A, Idaho Code:

(i) "Charge for accessing the system" means charges relating to:

1. Access to the web-based electronic sales tracking software;
2. Training; and
3. Technical support to integrate to point of sale vendors, if necessary.

(ii) "Charge for accessing the system" does not include:

1. Charges relating to required internet access;
2. Optional hardware that a pharmacy may choose to purchase for work flow purposes; or
3. Other equipment.

#### **History.**

I.C., § 37-3303, as added by 2006, ch. 95,  
§ 1, p. 269; am. 2012, ch. 303, § 1, p. 841.

## STATUTORY NOTES

**Amendments.**

The 2012 amendment, by ch. 303, rewrote subsections (1) through (3) and added subsection (4).

**37-3303A. Electronic tracking system.** — (1) The board of pharmacy shall implement a real-time electronic sales tracking system to monitor the nonprescription sale of pseudoephedrine products in this state provided that such system is available to the state without charge for accessing the system to the state or retailers. If a real-time electronic sales tracking system is not available to the state without charge for accessing the system to the state or retailers, the board of pharmacy shall not be required to create such a system.

(2) The records submitted to the tracking system shall include the following:

- (a) The purchaser's name and address;
- (b) The purchaser's signature, either on a written form or stored electronically in the tracking system, attesting to the validity of all information provided;
- (c) The type of photographic identification presented pursuant to section 37-3303, Idaho Code;
- (d) The number and issuing government entity of the photographic identification presented;
- (e) The date and time of sale; and
- (f) The name and quantity of the product sold.

(3) The records submitted to the tracking system are for the confidential use of the retailer who submitted such records, except that:

- (a) The records must be produced in court when lawfully required;
- (b) The records must be open for inspection by the board of pharmacy; and
- (c) The records must be available to any general or limited authority Idaho peace officer to enforce the provisions of this chapter or to federal law enforcement officers.

(4) The electronic sales tracking system shall be capable of generating a stop sale alert, which shall be a notification that completion of the sale would result in the seller or purchaser violating the quantity limits in section 37-3303, Idaho Code. The system shall contain an override function for use by a dispenser of pseudoephedrine products. Each instance in which the override function is utilized shall be logged by the system.

(5) The board of pharmacy shall have the authority to adopt rules necessary to implement and enforce the provisions of this section and section 37-3303, Idaho Code.

(6) A retailer participating in the electronic sales tracking system:

- (a) Is not liable for civil damages resulting from any act or omission in carrying out the requirements of this section or section 37-3303, Idaho Code, other than an act or omission constituting gross negligence or willful or wanton misconduct; and
- (b) Is not liable for civil damages resulting from a data breach that was proximately caused by a failure on the part of the electronic sales tracking

system to take reasonable care through the use of industry standard levels of encryption to guard against unauthorized access to account information that is in the possession or control of the system.

**History.**

I.C., § 37-3303A, as added by 2012, ch. 303,  
§ 2, p. 841.







